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No. 12300 – No. 12301

United States
Court of Appeals
For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, and JEAN LANE, individually and as Chief of Police of the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County of Maui, and WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

No. 12301

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii,

Appellant,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

vs.

E. R. BEVINS, individually and as County Attorney for the County Maui, and WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

Transcript of Record

In Four Volumes

Volume III Pages 1067 to 1570

FILED
OCT 4 1949
PAUL P. O'BRIEN,
CLERK

Appeals from the United States District Court for the Territory of Hawaii

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

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PROCEEDINGS CONTINUED

The Court: Is there any objection to the offer?

Mr. Resner: I don't deem it relevant, but I am not going to make it any objection. [545]

The Court: The document may be marked with the next Prosecution letter.

Deputy Clerk: Exhibit "D."

Mr. Crockett: We have nothing further.

(Thereupon argument was held by Counsel for the Defendants.)

(The Second Circuit Court recessed at 2:23 p.m. and reconvened at 2:30 p.m.)

(Thereupon argument was held by Counsel for the Prosecution.)

(Argument in rebuttal was held by Counsel for the Defendants.)

(The Second Circuit Court recessed at 3:05 p.m.) [546]

(The Second Circuit Court reconvened at 3:12 p.m.)

The Court: I appreciate the fact that perhaps a more finished result could be obtained by awaiting a careful written decision in the matters before the Court, but it is my view that the matters presented in these proceedings might better be pushed forward to some conclusion—even with an inadequate oral decision taken by the Court Reporter.

I have been on the Bench in this Territory for twenty-one years, have been to this Circuit many times on matters pertaining to First Circuit busi-

ness and Territorial business generally. I therefore think that it is not out of order for the Court to take judicial notice of the ordinary facts of the Territorial situation and the County of Maui because it is a well-known factor that this is an island community with scattered rural sections engaged, as the evidence also shows, in agricultural pursuits in the main, but agricultural pursuits stemming from an activity that needs large blocks of capital, that is, for the economic situation, and thereby providing labor possibilities and means of livelihood for the population here. But by reason of the scattered nature of the different communities on the three Islands composing this County, those communities are what might be described by one [547] who knows the atmosphere as being little neighborhoods where, as Mr. Pombo gave evidence from his testimony, it is not difficult for one travelling around in politics or in the task which occupies him to get acquainted, not only personally, but through information gained from persons known about persons, that he does not know in that contact sense, of the standing and reputation of, well, you might almost say everybody who is a qualified voter. That is the general conclusive inference from Mr. Pombo's testimony. So that an inference that these jury commissioners have picked out, in the subversive sense used in some of the cases, their personal friends, would be an entirely wrong conclusion. They have sought information from each other as commissioners about the character, intel-

ligence and general familiarity of the personnel in the lists that they had available as to whether those people moved in and amongst their little neighborhoods with an understanding of the problems of the people with whom they were neighbors.

And in that connection, I am compelled to digress slightly in a logical continuity to call attention to what is available from the Revised Laws as a matter of judicial notice of the statutes reflecting the build-up of this Territorial community. And in that connection in Chapter 30 of the Revised Laws dealing with the subject of education, Section 1824 [548] indicates that it has been necessary on the question of English for standard schools in the past, as different from ordinary public schools, so that the quality of English could be improved. And then the Legislature of 1945 amended that section so as to gradually carry the idea, not as to separate standard schools, but as to standard sections in every school.

I point that out to show that the background of any statistical list from the United States Census or any other known list of that character which might be applicable to continental United States is not applicable, per se and ipso facto, to the conditions of the motley mixtures of races that we find being educated in our public schools. So that to say merely that a person has gone through the fourth grade or to say merely that a person has gone through the eighth grade that that ipso facto characterizes his ability to understand what goes

on in a court room where the English language is the language in which the records are kept, is not something that can be drawn as a quick conclusion, but requires a little more than that.

Coming back to the more material features of the motion before the Court, I must first clear out from consideration to get down to the meat some things that appear in the record. One of the first things that I must clear out, so that the record may be clear upon it, is the reason why the Court has excluded from any material consideration here the question of the consideration of women in our problem as qualified jurors and their absence as being part of one of the elements of the challenge as being immaterial. The leading case upon that point, Counsel somehow doesn't seem to focus his eyes upon what to my mind is the material gist of the Court's ruling—the syllabus right at the outset. I am reading now from Volume 329, United States Reports, No. 1, Page 187, Ballard vs. United States:

"In a State where women are eligible for jury service under local law, a federal jury panel from which women are intentionally and systematically excluded is not properly constituted——"

And in the decision, the Court points out that there has been no congressional statute setting forth as an act of Congress the qualifications of jurors, generally, in the federal court. On page 190 in the opinion:

"Congress has provided that jurors in a federal court shall have the same qualifications as those of the highest court of law in the State."

And then we are faced with this fact. Congress has legislated for the Territory of Hawaii in the Organic Act the qualifications of the jury which the challenges have mentioned, and has provided that a juror must be a male citizen. Counsel has pointed [550] out that there has been a change in the voting status of women since that, but the fact remains that Congress has not seen fit, for reasons of its own, to implement that into the question of the jury qualifications, and it is conceivable that they may have some reasons for it, and this Court cannot judicially legislate. Hence, the reason why this Court has excluded from any further consideration the question of the challenge, because that there are no women is obvious from the authority cited.

Secondly, there is a challenge, and it has been amended, by which the defendants challenge named jurymen on the particular panel that has been drawn for this particular jurisdiction, and the Court pointed out in the development of the case that all that has been alleged in that challenge is the conclusion of the minds of the attorneys for the defendants that each of these gentlemen is prejudiced against the defendants. No facts were set out as to why. "That certain grand jurors are members of the employer class or their representatives"—and the Court knows no logical sequence that because they might be of the employer class or their representatives that there flows in the minds of human beings prejudice against other human beings—it is a total non sequitur.

"That certain grand jurors are connected with, either directly or indirectly, the various business concerns involved in the recent pineapple strike out [551] of which the instant cases arose." Well, every member of Maui who is supported by the economy is in some way, directly or indirectly, connected with the pineapple activity and its effects upon that economy.

"That defendants and each of them cannot get a fair or impartial consideration of the charges against them at the hands of the aforesaid grand jurors."

Then it goes on—"Defendants, and each of them, demand that they be permitted to examine each and every one of the grand jurors of the particular array in this case and also the remaining members of the entire grand jury panel on voir dire hearing——" Well, this Court, as the record shows, would not allow a general voir dire hearing in that sense, but a substitute therefor occurred and in which these men upon the current panel appeared as witnesses and were examined as to their business status, as to whether or not they had any prejudices against the ILWU specifically or against the defendants particularly. And upon that examination, their answers were in the negative—that they had no prejudices one way or the other—and no fact was adduced by any extraneous evidence on the part of the movants that any one of these jurors had in the course of their conduct as citizens in this Territory abused any of the privileges of any of the

defendants in the class which Counsel says they belong to, or had in any way been subversively obedient [552] to strings pulled from any employment that they as jurors were participants in.

Each of the defendants took the stand. There was no bar on the part of the Court. Counsel examined them as he saw fit. No fact from any of the lips of any one of those witnesses was elicited or attempted to elicit that they had been abused by the conduct of either the individual grand jurors or any of the companies which they may have been employed by. There was no bar put by the Court to listen to any fact indicating that any of those jurors were lying in connection with these defendants.

But another peculiar fact that I must mention in passing in connection with these challenges—an affidavit by Mr. Maile. Mr. Maile took the stand, and of course it is obvious that the language of the affidavit is not his. I compare the language of the affidavit with the type of testimony that he gave, but be that as it may, the Court is aware of the fact that Counsel has to put into legal language, or thinks he has to put into legal language, the kind of thing that a man complains of about his fellow citizens. But no one of the other defendants was in any respect asked whether or not there was anything in Mr. Maile's affidavit that they themselves knew of or wanted to be participants of. It is only Mr. Maile who assumes to talk for them all.

I mention it in passing to indicate perhaps for somebody who may read the record hereafter what the [553] background of this challenge really is. But by reason of the fact, perhaps, of the shortness of time, I won't hold it against Counsel for the Defendants nor regard it as a waiver of the challenge in that respect in the matter, but consider as though it is part of the whole, although the argument has been addressed practically conclusively to the question of the way this grand jury has been selected as a complete jury list for the ensuing term. But it might very well be considered by any other court ruling upon this that the absence of argument before me amounts to an abandonment of any question as to whether these particular jurors who have been examined have shown by their answers or by any of the evidence to be prejudiced against these defendants.

I am passing from that point now to what has really been argued, and that is that the way of the drawing of the panel is as a matter of law unconstitutional, and the defendants have a right to have the panel dismissed and a new panel list drawn. Now, what are the facts? The facts, in summary, are that commencing last July some time, the Jury Commissioners sent out questionnaires to nineteen of the thirty-four or thirty-three precincts, or whatever it is, of voting precincts in this jurisdiction for the purpose of becoming informed, prima facie, as to what the qualified personnel was for both trial and grand jury service. The missing

precincts to which questionnaires were not sent out last year were [554] covered in two other ways by the evidence before the Court. One was that there were questionnaires from previous years. The other was by reason of the precincts being more closely connected with the region of the court house, the personnel was better known and more widely known by all the Commissioners as to qualifications. And when those lists came in, and with the other lists available to them and other information available, the Commissioners sat down in frequent meetings and went meticulously over the questionnaires and the other material and attempted, first of all, to draw up an unquestionably qualified personnel out of that complete array of data. Those who were not apparently qualified from their questionnaires, or whose reputation in the community were not really known, were set aside for the time being. Now perhaps it is unfortunate that in the clerical set-up of that summary, the word "questionable" is used, but I think the evidence clearly discloses from the lips of Judge Wirtz that that was simply a nomenclature used to differentiate from the unquestionable list those whom they needed further investigation for. That was the only purpose of that division. And also out of the list grew the other sections of the list—those who were clearly exempt, out of the jurisdiction, over age, sick, and so on, or for some reason or other were not from that standpoint qualified or available—either one.

Now, what did they do, these Jury Commis-

sioners? [555] Select their personal friends? The answer is no, and Counsel knows it. The use of the term, "people I know," means that they moved around the community and gathered information to know what the reputation was.

What did they do next? They took the voting list as a fair starting point of the different precincts and divided the percentage—fifty names to be chosen—and the total number of voters, not those total number of available they had been able to segregate out of this preliminary process, but the total number of voters and gave an approximate percentage so that each precinct would have its proportional representation.

Now, geographically, there is no question about the fact that this jury is a representative jury, proportionate to the electoral vote, regardless whether that electoral total is completely qualified or not. But they adopted a method to distribute the selection over the Island geographically and proportionately.

And then what did they do next? They examined the list, according to the evidence, in each of these precincts in respect to the number to be selected out of that precinct. If the precinct was entitled to, well, let's take one. I think it is Lanai that was entitled to two. Mr. Clerk, may I have that Grand Jury list? Court's Exhibit 1, I think it is.

(Clerk handing exhibit to the Court.) [556]

The Court (Continuing): I am getting my in-

formation in this regard from the Court's Exhibit No. 1—that on the Island of Lanai, 1st precinct, their proportionate number was two. And on that proportionate number, they took a gentleman by the name of Mr. Eldredge and a gentleman by the name of Mr. Onuma. From the name of the second, I would presume that Mr. Onuma is Japanese —Toshio, I think, is his first name—having satisfied themselves that those two men had the feel of their precinct.

We go to the next place, the 2nd precinct, Honolua—and they selected Mr. Alfred S. Burns. Now, Mr. Burns is complained against, apparently, because he is a caucasian and that the district out of which he is picked there are a lot of laborers, an over-balance of workers, say Counsel, of the pineapple company. Well, I know of no principle which nominates that out of any given precinct any proportionate racial decision must be made in view of the statute that there shall not be a racial discrimination. "Without reference to race or place of nativity," says the statute.

What was the basis of decision as I can gather from a combined and digested evidence of the Jury Commissioners and the whole situation? That apparently Mr. Burns, having to work with laborers, would have some knowledge of their problem, some feel for it. He would [557] have to if he wanted to live peaceably in that precinct. The fact that he was not of their social, ordinary table companionship isn't the point. The question is did he under-

stand the problems of the 2nd precinct and the population thereof within which he must live? Could he understandingly represent his neighbors? Well, I think that that is a rational, understandable, permissible method of choice in connection with a given person living in a given precinct.

And so they went down—I won't go over the whole list—and so they went down the list, and in some precincts, they picked Portuguese; and in some precincts, they picked Japanese; and in some precincts, they picked Hawaiians, part-Hawaiians, Chinese—they go through the list and try to pick out persons who have a feel for the problems of their precinct. That is the problem which the statute places upon their shoulders.

I don't know how we are going to literally construe and technically argue about this juggling with words, but the requirement of the statute in connection with the jury commissioners' duties is contained in Section 9800. I am not reading it all, but this particular language:

"All of such selections shall be citizens whom the respective commissions believe, after careful investigation in each case, to be qualified and not exempt under the provisions of this chapter. If practicable, no person shall be selected who has served as a juror or grand juror within one year."

I underscore the word, "served." [558]

"All of such selections shall be made without reference to the political affiliations or to the race or place of nativity of citizens, with a view to obtain lists representative——"

I underscore the word, "representative."

"——of the qualified citizenry of each circuit."

What do we mean by "representative"? I know that decisions use the word, "cross section." You can make argument on various lines on the technical abstract meanings of "cross section." "Representative" gets a little bit closer to the problem.

We are concerned, gentlemen, with the—I don't want to leave out Mrs. Bouslog—ladies and gentlemen, with the problem which is human, personal, not which is—how many bags of oats and how many bags of wheat and how many porkers can we deliver to the slaughter house, the ordinary realm for the statistics of goods. I am sorry, but I can't go along with this statistical proposition except as it may show that there has been a deliberate, purposeful omission on the part of persons who have been given a duty not to consider and to exclude from consideration for some reason. But the statistical part of it to my mind is unhuman or inhuman. The problem is personal.

"All of such selections shall be made without reference to the political affiliations or to the race or place of nativity of citizens——"

And yet the funny part of this whole argument is that their basis is race, their basis is percentage of races; and these Jury Commissioners have gone into it from the [559] standpoint of the basis of human beings who have the confidence of their different precincts, who have an understanding of the prob-

lems of the inhabitants of their different precincts, and I don't know of anything that bars the manager of a business from knowing what the workers that he has to work with and deal with—what their different problems are in a community such as Maui. It may be different on the Mainland where they don't mix with the people and one another in so many races as they mix with of necessity in this jurisdiction. I don't know about that. I am judging from the standpoint of this Island and these Islands. And for this Court to impose an abstraction upon the Jury Commissioners who have devolved upon them a human problem of getting a representative group who will care for the welfare of their neighbors, and, knowing it, they find men of all the races except, Counsel has pointed out, the Filipino——. Well, I don't understand that a person cannot understand a Filipino unless he is in a Filipino body. I think that a man who has to work with these good Filipino workers from day to day and sees the way they approach their problems might get a very good understanding of what motivates their actions and be ready to protect them from themselves and from each other by the use of the knowledge that he thus gained.

And to say that these Jury Commissioners have not attempted in the variegated possibilities that are before them to make a representative group out of fifty [560] men from six thousand odd qualified people is something which would mean that Jury

Commissioners, trying again, would be up against the same kind of technical abstraction when somebody didn't like the fact that they had clients who didn't want to go to investigation.

I don't think it is necessary to say any more. From the record in the case, the challenges are denied specially and in their total presentment, and the proceedings in this or any other cases lying before the Grand Jury that are considered in this jurisdiction may go forward.

Mr. Resner: May it please your Honor, we take an exception to the Court's ruling in all its aspects and with regard to each of the challenges and motions.

The Court: The exceptions are noted and allowed. There being nothing before this Division on these motions or upon the substitute assignment that I am fulfilling, my tour here is ended.

(The Second Circuit Court adjourned at 3:45 p.m.) [561]

I, Ivy W. Parks, do hereby certify that the preceding pages, numbering one (1) to five hundred and sixty-one (561) pages, inclusive, are a full, true and correct transcript of my shorthand notes of the testimony and proceedings had in the matter of Territory of Hawaii vs. Abraham Makekau, et al., Defendant's, Criminal No. 2412 and Territory of Hawaii vs. Diego Barbosa, et al., Defendants, Criminal No. 2413, at Wailuku, Maui, Territory of Hawaii, on September 15th, 16th, 17th and 18th, 1947.

Dated at Wailuku, Maui, Territory of Hawaii, this 24th day of November, 1947.

/s/ IVY W. PARKS,

Official Reporter, Circuit Court, Second Circuit, T. H.

[Endorsed]: Filed Jan. 28, 1948.

Item 85.

[Note]: Record of the proceedings before Young Wa, Acting District Magistrate of the District Court of Lanai on the preliminary hearing had by the plaintiffs Agliam et al., is the same as exhibit K, filed with defendants' motions of January 14, 1948. Set out on pages 138 to 323 volume I Civil No. 828.

In the United States District Court for the Territory of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a Voluntary, Unincorporated Association and Labor Union, et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and as Attorney General of the Territory of Hawaii, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled case, held in the United States District Court on December 10, 1947, at 10:00 o'clock a.m., on order issued December 1, 1947, directing defendants to show cause why a preliminary injunction should not be entered, return of defendants to order to show cause, and motion of defendants to dissolve temporary restraining order,

Before: Delbert E. Metzger, Judge, U. S. District Court, Honolulu, T. H.

Appearances:

HARRIET BOUSLOG,
Appearing for Plaintiffs;

MYER C. SYMONDS, Esq.,
Appearing for Plaintiffs;

RHODA V. LEWIS,
Assistant Attorney General,
Territory of Hawaii,
Appearing for Defendants;

WENDELL F. CROCKETT, Esq.,
Deputy County Attorney,
County of Maui, T. H.,
Appearing for Defendants.

(After Argument)

The Court: Well, I think I am going to put in a month or so mulling over this matter and going over briefs. I have heard the arguments. They have been quite complete. And I think I know this much about the situation, that there are rather difficult and very important matters involved in this case. They ought to be settled definitely and finally for the good of the people living here. And it appears to me that the only way they can ever get settled finally is by the decision of the Supreme Court of the United States. It may be that the quickest way to get it there would be through a three-judge court

in this court. I don't know that that is so because it might turn out, that the Supreme Court would say that the three-judge court isn't justified here, that we are not entitled to have a three-judge court in the Territory under any consideration. I don't know. That matter is open to different views. It hasn't yet been submitted to the Supreme Court. I'm sorry there has been as much delay as there has been in getting to that question. I feel that there is sufficient involved here and there is sufficient set-up in the complaint to justify its retention before the court. And for that reason the motion to dissolve is denied. And I don't know any way, in view of the position the court here took in the Chinese Language School case, to deal any further with this case than to assign it to a three-judge court. I think that it ought to be tried out on the merits of law by a three-judge court and while this Court has no authority, as I believe, to do anything further than to continue a temporary injunction and apply for the organization of a three-judge court. That I intend to do. [2*]

Mr. Symonds: Your Honor, will it be necessary to make a slight change in the form of the temporary restraining order in view of the information given to the Court this morning by Mr. Crockett? In the last paragraph which now reads, "It is further ordered that pending the hearing of the order to show cause that the Defendants Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, Ingram M. Stain-

*** Page numbering appearing at bottom of page of original certified Transcript of Record.**

back, individually and as Governor of the Territory of Hawaii; E. R. Bevins, individually and as County Attorney for the County of Maui; Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and the agents, representatives and deputies of said defendants, and Cable A. Wirtz, individually and as Circuit Court Judge and Jury Commissioner of the County of Maui, be and they are hereby restrained and enjoined until the further order of this court from presenting or submitting the charges as aforesaid''—now, the ''aforesaid'' refers to this unlawful assembly statute—''against said plaintiffs to the said grand jurors of the County of Maui.'' Now, the said grand jurors, they will be out of office the end of this month and therefore the plaintiffs now move that the order be amended by adding to the said grand jurors of the County of Maui, adding the words ''or to any grand jurors of the County of Maui.'' That would prevent the submitting of this question of the statute. Otherwise the whole purpose of the decision would be defeated. The restraining order is only against these people presenting it to the said [3] grand jurors who are the ones named in the complaint. What we want to do, to restrain these defendants from presenting these particular charges to any grand jurors pending the determination by this three-judge court. So the addition of those six words ''nor to any grand jurors of the County of Maui'' would prevent the submission of any charges of riot or unlawful as-

sembly under that particular statute which is under attack.

The Court: Well, I am of the opinion that the first order, that order that was issued, was not lawfully issued, for the reason that at the time it was issued you hadn't in your petition, you hadn't complied with the requirements that would entitle you to that order, a thing that was overlooked by the Court in the haste of the situation. That was 8:00 o'clock the following morning that the grand jury, 8 or 9 o'clock, perhaps 9 o'clock, the grand jury would be called, that if anything was done it was necessary to get it to them before that time. I think that an amended temporary restraining order should be issued as of this date.

Miss Lewis: If the Court pleases, could we be heard on this proposition of applying it to any grand jurors? I think that would be highly improper. Unless they strip out of the complaint the charges against the grand jury and amend it, it will only be attacking the statute and that is what the case is about. I don't see how they can enjoin us from presenting the case to any grand jury.

The Court: Well, I assume, of course, he means the grand jury attached to that court, the circuit court. [4]

Miss Lewis: Yes, but it has a lot of stuff in here about this matter in which this grand jury was impaneled, and so on. Now, apparently it has to be dropped out of the case and the whole question is the constitutionality of the statute.

The Court: That is what it would resolve itself to. Yes, that is a fact.

Miss Lewis: Well, I think that should all be accomplished at the same time. It should be stripped down if this order is going to be changed.

Mrs. Bouslog: That isn't true until and unless the present grand jury is dissolved and ceases to exist. And that to have a temporary restraining order it must be to hold the status quo pending the convening of a three-judge court for the purpose of testing the constitutionality of the statute.

The Court: I don't want to sign any order contingent upon something that possibly may never happen. I don't know. I assume that it is entirely feasible to organize a three-judge court but I am not certain of that. I don't like to make an order depending upon it, upon the creation of a three-judge court. I don't just know how to limit it as to time. But I always hesitate to make any order contingent upon the happening of something else if the happening should be a certainty.

Mr. Symonds: Your Honor will notice that there is no restraining order here against the grand jurors. We discussed that with Your Honor. The grand jurors, the present grand jurors are not restrained. [5]

The Court: Yes, that is so. I think I insisted on your taking that out. It is only the enforcing officers. The grand jury isn't likely to operate without some law enforcing officers coming before it. They may have time to somewhere else but they

don't do it in the Territory of Hawaii on their own initiative.

Mr. Symonds: So the only modification we are proposing is that the restraining order prohibit these enforcing officers from presenting it to the said grand jurors. Now, the said grand jurors are those who are named as defendants. So therefore modification by simply adding "or to any grand jurors of the County of Maui" just simply ties the hands of the enforcing officers so that they wouldn't until this passes upon the issues be able to present this charge, any change of coming until the statute which is being attacked as unconstitutional to any grand jury over the County of Maui. And Miss Lewis says she objects to that because there is a lot of language in the complaint and other things other grand juries—Well, all those issues will be passed upon at the right time when she files her pleadings and any supplemental pleading.

The Court: As soon as this grand jury goes out we will weigh the purpose of passing on the merits of this grand jury.

Mr. Symonds: Well, that will be in issue, Your Honor, and that will have to be passed upon when that happens.

The Court: Unless there is some specific objection as made to the qualifications of the next grand jury, why you can't anticipate that you are going to have any trial, whether it is lawful or not. [6]

Mr. Symonds: That is right, Your Honor, but as Mrs. Bouslog says, at the present time we do have

this grand jury. They are still sitting there. They can do anything they want before the first of the year. We don't know whether they are going to be called the first or second or the tenth. Therefore, it is necessary to have the order read the way it is now with the addition of these words so that Your Honor can protect us so that if a new grand jury is sworn in it won't indict these men under alleged unconstitutional statutes.

Miss Lewis: If the Court please, the court suggested that the thing should not be anticipated. If the grand jury panel goes out and another one comes in, there will be time enough and then they can strip the complaints down to what is not moot at the same time that the order is changed. And that would be the proper way to proceed.

The Court: Yes. Well, I feel this way about the situation, that the Territory or the enforcement officers just aren't suffering any detriment. These men are under bond, I understand. Indications are, from this one specimen here that is shown, that they are under a thousand-dollar bond. And I feel that it is well enough to delay that matter of prosecution until the essentials of this complaint can be heard. And in view of the position the Court took in the Chinese Language School case there is just no other way that we can proceed in this case except through a three-judge court. So that I shall make the best and speediest effort I can to create, organize, assemble a three-judge court to hear and try the petition on its merits. [7]

Miss Lewis: Do I understand that the temporary restraining order will be reissued in its present form then?

The Court: Well, approximately the present form, with the addition that it would have to in all reason carry the additional prohibition to any next coming grand jury.

Miss Lewis: Well, if the Court please, I don't feel that is proper at this time, because this case is directed against these grand jurors. And if that becomes moot then that should be dropped from the complaint at the same time that the order is made instead of as anticipated. Perhaps the judge will be able to get a three-judge court here before the second Monday in January. That is the date the term changes. I should doubt that but you see the situation is that the court would sit in if an oncoming grand jury, a new one, would come in and be called and indict these fellows under this statute that is being attacked.

The Court: Well, if the case is presented against the statute and that is the substance of the case, I think that the complaint should say so and not carry all these additional allegations about these other grand jurors. I mean the allegations—they are only on this particular grand jury.

Miss Lewis: Well, if that is the Court's feeling in the matter, I feel that we are left with a complaint loaded up with a lot of stuff. In other words. if they are assuming that this is going to become moot as to the particular grand jurors, which they

seem to assume, and they ask the court to change the order, then at the same time they should take all those other allegations out of the complaint. That is accomplished, I think. [8]

The Court: Well, with that order, with an order forbidding this grand jury to deal with anything, to have it presented to them, it is just as well to take it out because their interest in that grand jury so far as this case is concerned would be at an end. It is just as well to take it out now. As soon as we get an order of restraint against that grand jury, this present grand jury, from proceeding any further—what they want, I don't know that they have specifically prayed for it, etc., but what they want would be to keep an incoming new grand jury from indicting these men under this same statute, which they still insist, notwithstanding the Supreme Court decision, is unconstitutional.

Miss Lewis: Well, I don't want to keep you. I know it's awfully late. Here is the point. They have asked to add a reference to a grand jury that hasn't even been impaneled yet on the theory that the three-judge court wouldn't be assembled in time. And if that is true, and that is their theory, at the same time they should take out of the complaint the attack upon the grand jury as such, because that is all going to become moot. In other words, the proper thing would be, if the Court is going to continue this restraining order, notwithstanding our objections—And I am not going to burden the Court with more argument about that—to come in, if this grand jury

does, or is about to go out of office, and change the order so as to apply to another grand jury and at the same time admit that it is moot as to the grand jury part of the case, and let [9] the record get straightened out on that. Otherwise, we will just have a terrific time to get that settled, that it is moot to that part.

The Court: I rather lean to that view myself but I don't know that they need, but they ask for, they might need for a restraint against this present grand jury as long as it is in office.

Miss Lewis: Well, that the Court gave them, as I understand.

The Court: I didn't give it. Today, I don't know if it is the date, but not more than ten days that that temporary order runs.

Miss Lewis: Well, I don't know whether I understand correctly. I objected to the Court continuing it and asked the Court to dissolve it. What was the Court's ruling of that?

The Court: The motion was denied, although I confess that from one point of view, and perhaps a sound one, that the order of injunction wasn't lawful and binding from the date it was signed because it wasn't based upon a complaint sufficiently complete to authorize the Court to issue an order. But that could have been cured. Of course, it could have been just simply extra work, to make a specific attack on that, because before there was any answer or any motion to dissolve it the complaint had been cured by amendment. And I would have

felt obligated to have simply issued a new temporary restraining order. So that seems to me, like that is water under the bridge. And in order to temporarily [10] restrain until we can get a court together I suggested that a new restraining order be issued. I think that restraining order should cover the present grand jury and any other following jury until the three-man court can deal with it. It wouldn't have any force unless it did——

Miss Lewis: Well, I guess the Court has ruled on my point, then. My point was that as far as another grand jury goes, that is anticipatory. It is entirely improper. The complaint was filed, talking about this grand jury. And I think the whole thing will be confused by the Court putting in a reference to some other grand jury that isn't even mentioned in the complaint because the Court is seeking to anticipate as the fact that those issues as to the grand jury may become moot and they should be stripped.

The Court: It would be moot as soon as that grand jury is dissolved. Now, whenever that happens, if the petitioners don't voluntarily remove that from their complaint, the issues that they raise, so far as I am concerned, assuming that I am one member of the three-man court, I will certainly be in favor of striking it from the complaint because it would be moot. There is no use trying to get the Court to deal with some dead issues.

Miss Lewis: Well, that is not so simple, Your Honor. We have to file our motions and answers, and so on, at the proper time. And how are we go-

ing to move to strike something when it is moot, and so on? I think that by anticipating this Court is complicating the whole matter. The proper thing would be, at the time the term is about to change for the plaintiffs to come in and get the order [11] changed, if the three-judge court has not yet met, and at the same time admit that that is moot and have it taken out of the complaint. So that we at least have accomplished something.

The Court: I think they should do that. That is, when this grand jury goes out, when it is succeeded by another, and you know that you are not dealing with this grand jury that you are complaining about, then I think you should remove it from your complaint.

Mrs. Bouslog: These issues that would be moot would be, whether they were in fact stricken from the complaint, would not be considered by the Court in any event.

Mr. Symonds: We can always come in and file a judgment of mootness at the proper time. I think counsel is unduly alarmed as to what is happening here. I don't think any rights are being prejudiced after January 2nd, or whatever it is. She can file any motions to dismiss or to strike anything she wants to as far as the pleading is concerned.

The Court: Yes, but who's going to consider it until we get the court organized?

Mr. Symonds: The motion will remain on trial.

The Court: The limitations are quite pronounced——

Miss Lewis: That is why, if the Court would confine its present order to the present grand jury which this complaint is talking about——

The Court: But that would leave you wide open.

Miss Lewis: I am not trying to put anything over. They can come in before the term is going to change, when it is about to change, and point out there is a different situation. Get that order changed and at the same time they would remove those moot parts from the complaint because that would be part of their application for a change in this order. And that would be to my mind the proper thing to do rather than talk about something that hasn't happened for one purpose and not for another. That is why I object to adding "any other grand jury" at this time. Let them add it at the proper time if that situation occurs and at the same time take this out of the complaint where it belongs.

The Court: I don't know how many temporary restraining orders the Court, this Court, one-man court might issue from now on but I don't want to take a chance on any further ones, having decided that it is a three-judge court proposition. I don't want to move on that.

Mr. Symonds: Your Honor, we will prepare an amended restraining order and present it to the Attorney General for approval as to form and then we can discuss it in the chambers.

The Court: That is the best way to do it. And in the meantime—well, you do that tomorrow.

Mr. Symonds: Yes, Your Honor, the first thing.

(Adjournment of Court.) [13]

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows: that the foregoing is a true and correct transcript of proceedings in Civil Case No. 828, held in the above-named court on December 10, 1947, before the Honorable Delbert E. Metzger.

/s/ ALBERT GRAIN.

May 26, 1948.

[Endorsed]: Filed June 21, 1948. U.S.D.C.

[Endorsed]: Filed July 23, 1949. U.S.C.A.

In the United States District Court for the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a Voluntary, Unincorporated Association and Labor Union, et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and as Attorney General of the Territory of Hawaii, et al.,

Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a Voluntary, Unincorporated Association and Labor Union, et al.,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and as Attorney General of the Territory of Hawaii, et al.,

Defendants.

TRANSCRIPT OF PROCEEDINGS

Before: Honorable Delbert E. Metzger, Judge; Honorable John Biggs, Jr., Judge; Honorable George B. Harris, Judge.

Honolulu, T. H., April 15, 1948

(April 15, 1948, 2 p.m. The clerk having called Civil Nos. 833, 834, 828, and 836, the following proceedings were had:)

Mrs. Bouslog: Plaintiffs are ready, your Honor.

The Court (Judge Biggs): Yes. Are all counsel present?

Mr. Griffith: Counsel are present, your Honor.

The Court: For all the parties.

Before we proceed, ladies and gentlemen, the Court desires to make a statement which is equally applicable to all the cases, all four numbers.

In the Mo Hoc Ke Lok Po v. Stainback case the district court of Hawaii held that Judge Metzger, the United States senior district judge, might call to his assistance two other judges, one of them a circuit judge of the Ninth Circuit, the other the senior district judge of the Southern District of California, pursuant to section 266 of the Judicial Code as amended, to issue a preliminary and final injunction and to adjudicate the constitutionality of an act of the legislature of Hawaii.

That case, we are informed, is about to be appealed, probably to the Supreme Court of the United States.

Despite the fact that the Mo Hoc Ke Lok Po case at present is the law of this district, we conceive that the question of the applicability of section 266 to the cases at bar may perhaps be a doubtful one. Judge Metzger, however, is sitting as the senior district judge of this court and Judge Harris is sitting herein pursuant to a designation by Judge Garrecht, the senior circuit judge [15-B] of the Ninth Circuit, as am I, I having been designated to the Ninth Circuit by an order of Mr. Chief Justice Vinson.

Whether we sit as a three-judge court pursuant to section 266 or as three United States judges sitting en banc need not be presently determined, though it must be the subject of the greatest consideration by this tribunal in futuro.

We are in receipt of a brief filed by the attorney general, the attorneys for the defendants, which I

presume copies have been given to all parties, in which the attorney general takes the position that section 266 and the provisions thereof are applicable to these cases, though it is not conceded that the cases are of a type or kind which would move the discretion of this court to issue the injunctions sought.

As I understand the situation of the record, the state of the record in all of these cases, Judge Metzger has issued a temporary restraining order and at present the cases are coming on for hearing as to whether or not a permanent injunction should be granted.

We understand that there are motions to strike filed in the cases, and we consider that it would be appropriate to hear those motions to strike first. And we think that it would probably save time if we proceeded first with the motions to strike in Nos. 828 and 836, the International Longshoremen's & Warehousemen's Union cases, consolidating those for argument. And I think also we are of the opinion that the Reinicke cases [15-C] should be argued immediately thereafter, consolidating them since the facts in the respective cases are common points.

Motions to dismiss have been filed in all cases. Am I correct in that statement?

The Court: (Judge Metzger): Yes.

The Court (Judge Biggs): Therefore we think that you should proceed, the attorney general should proceed with the motions to dismiss in the two

cases which I refer to, the longshoremen's cases. And if counsel will do that we will appreciate it.

Are there any questions counsel desire to ask?

Mrs. Bouslog: Your Honor, I didn't quite understand the Court. Was the Court's intention that the attorney general proceed with the motions to strike as well as the motions to dismiss?

The Court: I want to make sure of the state of the record. Are there motions to strike?

Mrs. Bouslog: In all cases.

The Court: In all cases. Are there motions to dismiss in all cases?

Miss Lewis: There are, your Honor.

The Court: Is there any reason why the motions to strike and the motions to dismiss should not be proceeded with together?

Mrs. Bouslog: It would seem to me, your Honor, that the first case on the calendar is Civil No. 828, and I would have no objection to the Court's suggestion that that be consolidated with Civil No. 836, in which there [15-D] are similar issues. But I would suggest that both the motion to strike and the motion to dismiss, plus the hearing on the preliminary injunction take place in those cases first.

The Court: No. What I want to do is, what we want to do is get the motions to strike and the motions to dismiss out in both series of cases. Not only in the longshoremen's cases but also in the Reinecke cases.

Mrs. Bouslog: But it was your Honor's inten-

tion that the motions to strike and the motion to dismiss be argued together?

The Court: Unless counsel can see some reason why they should not be so argued.

Miss Lewis: No, your Honor. I see no reason why they should not. In 828 and 836 I think the motions are a more definite statement, and the motion to dismiss the action and for summary judgment in the alternative are all presented together.

The Court: Yes.

Miss Lewis: Might I make one more statement? Perhaps Mr. Griffith will want to elaborate. He is primarily handling 833 and 834.

As to the applicability of the three-judge court in Hawaii, we have submitted it does apply. But we feel these are not proper cases for a three-judge court. And 833 and 834, that is a really most serious case.

The Court: We have the petitions and we have carefully read them.

Miss Lewis: Yes. [15-E]

The Court: I doubt very much if at this time there is a great deal to be added to that phase of the case. Probably when the argument on the motions to strike and the motions to dismiss have been disposed of we may have further light on the question of the applicability of section 266, not only to 828 and 836 but possibly to 833 and 834 as well. At that point, if we desire further enlightenment we will ask counsel for it.

Miss Lewis: Yes, your Honor.

The Court: Mr. Griffith, are you prepared?

Mr. Griffith: There is nothing further to add on that.

The Court: Then will you proceed with the argument?

Miss Lewis: Taking up first Civil No. 828.

* * * [15-F]

I, Carey S. Cowart, one of the official court reporters for the United States District Court, Territory of Hawaii, do hereby certify as follows: That the foregoing is a true and correct excerpt from transcript of proceedings in Civil Nos. 833, 834, 828 and 836, held in the above named court on April 20, 1948, before the Honorable Delbert E. Metzger, the Honorable John Biggs, Jr., and the Honorable George B. Harris.

6/28/48.

/s/ CAREY S. COWART.

[Endorsed]: Filed June 30, 1948 U.S.D.C.

[Endorsed]: Filed July 23, 1949 U.S.C.A.

[Title of District Court and Causes.]

(April 16, 1948. Excerpt from proceedings.)

Mrs. Bouslog: * * * While the penalty doesn't have anything to do, it not being a cruel and unusual punishment, I think it would indicate age, it is antiquated, its lack of enforcement, it is now thought it is a statute of pagan history that should

not be and would not pass the test which the Supreme Court has already laid down.

* * *

Judge Biggs: Before you read that I think that you might give us your view as to the very first section of chapter 277, that is, 11570, where there are three or more persons assembled together with disturbance, tumult and violence, and striking terror or tending to strike terror into others. What is the test which you conceive of, of being applied to the others? Are they reasonable persons, not likely to take fear because they see four people together?

Mrs. Bouslog: Well, the common law test was a man of reasonable—a reasonably firm man, not somebody who was easily frightened, but a man of reasonable firm convictions, was the test of whether or not he was terrified. So far as the complaint is concerned, there is merely an allegation that certain people were terrified. What were the manifestations of that complaint?

Judge Biggs: Not the complaint; you mean the indictment.

Mrs. Bouslog: By the indictment. Yes. The Supreme Court in its opinion, on terror—I think that was the common law test, and that is what the Supreme Court said, that this statute must be interpreted by reference to the common law. And unlawful assembly is the common law of England, which the Supreme Court has said was rejected by the First Amendment and which the revolution was fought to do away with.

Now turning to the conspiracy statute. It is our opinion that the conspiracy statute of the Territory is clear. That under the decision in the Screws case —Counsel for the defendant cited the Screws case to uphold their contention that it was valid, but as I interpret the decision in the Screws case, the decision in the Screws case held that statute valid for one reason only, and that was because of the particular interpretation placed upon the word "wilful".

* * *

Certificate

I, Carey S. Cowart, one of the official court reporters for the United States District Court, Territory of Hawaii, do hereby certify as follows: That the foregoing is a true and correct excerpt from transcript of proceedings in Civil Nos. 828 and 836, held in the above named court on April 16, 1948, before the Honorable Delbert E. Metzger, the Honorable John Biggs, Jr., and the Honorable George B. Harris.

Jan. 25, '49.

/s/ CAREY S. COWART.

[Endorsed]: Jan. 25, 1949 U.S.D.C.

[Endorsed]: Filed July 29, 1949 U.S.C.A.

[Title of District Court and Causes.]

TRANSCRIPT OF PROCEEDINGS

of the above-entitled matter, on Monday, April 19, 1948, commencing at 2:15 o'clock p.m., before the Honorable John Biggs, Jr., the Honorable George B. Harris and the Honorable Delbert E. Metzger, sitting as a Three Judge Court, at the Federal Courtroom, Third Floor, Federal Building, at Honolulu, T. H.

Appearances:

Miss Rhoda V. Lewis and Robert B. Griffith, Esq., Deputy Attorney Generals, Territory of Hawaii, representing the defendants, and

Mrs. Harriett Bouslog and Myer C. Symonds, Esq., representing the plaintiffs herein,

Whereupon the following proceedings were had and done:

April 19, 1948, 2:15 o'Clock P.M.

The Court met pursuant to adjournment, all parties being present as before, whereupon the following proceedings were had and done:

Judge Biggs: During the noon recess Mrs. Bouslog asked permission of the Court to file a brief memoranda by tomorrow morning in respect to certain matters and cases that she had not brought to the Court's attention before we recessed. The Court gave her that permission, and, of course, will give you an opportunity to reply to it if you consider a reply necessary.

Now in respect to Civil cases 828 and 836, the Court makes the following statement on the motions to dismiss the actions in toto; motions for summary judgment in favor of the defendants, and, alternatively, that if the actions be not wholly dismissed, or if summary judgment be not entered for the defendants, the actions be dismissed as to certain of the defendants, and that the plaintiffs be required to make certain matters in the complaint more definite, and that the plaintiff be required to make a more definite statement of their claims, so as to state what your claim is founded on, and the separate transactions, and this is in both cases, Civil numbers 828 and 836.

As to those parts of the motions where it is requested that the claims set forth in the complaint be made more definite and certain, we are of the opinion that the protracted arguments of the last three days have demonstrated the defendants and their appeal counsel are fully informed of the nature of the complaint, and that no further precision or specification by the plaintiff is necessary.

These portions of the motions will be denied, and orders to such effect will be entered.

As to those portions of the motions going to the dismissal of the actions, as to particular defendants, respecting misjoinder, lack of jurisdiction, or otherwise, that portion of the motions going to the dismissal of the action, as to the Honorable Cable A. Wirtz, Circuit Court Judge of the County of Maui, the Court presently will express no opinion, and will

retain this part of the motion for further consideration and ultimate disposal at an appropriate time.

As to all other parts of the motion, the Court is of the opinion that they must be denied, and orders to such effect will be entered.

I might state, for the benefit of counsel that the orders have already been drafted and are in course of preparation.

We then come to the question of how we shall proceed in numbers 828 and 836.

Is what the Court has stated plain to counsel?

Miss Lewis: Yes, your Honor.

Judge Biggs: We, of course, still have the question of the applicability of Section 266. Probably we will let that go again, for the time being, though we will have to have, as we suggested before, something in the nature of a question and answer period respecting that.

The next procedure, I suppose, would be to have the plaintiffs go forward in support of their motion for a preliminary injunction, whether the proceeding is under 266, or by this Court sitting simply as a Court of three judges, or there is the alternative procedure, that perhaps the parties might agree, since the record will be very much the same in either instance, to proceed to a full hearing on the merits.

Mrs. Bouslog, you have the restraining order—What is your desire in the matter?

Mrs. Bouslog: Your Honor, it was my understanding that there was a consolidation, more or

less, of the two, of plaintiff's case for a preliminary injunction, combined with the resistance, or a motion to dismiss, and that in point of law the showing has been made; necessarily plaintiff's case has been made, insofar as the legal issues are concerned, in showing that there are substantial Constitutional questions involved, and that there are questions of serious nature, anyway. If counsel was incorrect in that——

Judge Biggs: We have expressed no opinion on the denial of the motion, Mrs. Bouslog.

Mrs. Bouslog: Yes.

Judge Biggs: And, of course, we will treat the cases as consolidated, if necessary, and I suppose we should make a formal order to the effect that the cases be consolidated for proof. We expressed no opinion regarding the legal issues beyond that necessarily involved in the denial of the motion.

So it is now your time to proceed and to present such evidence as you desire in support of a preliminary injunction, or if you and Miss Lewis can agree on the course to pursue, since in all probability that evidence in large part would be that which would be presented to the Court on final hearings, it is possible that you might go forward and present your case as if on final hearing.

Mrs. Bouslog: That would be quite agreeable to counsel for the plaintiff. Of course there is the matter of answer that is not——

Judge Biggs: Quite true; we will take up the matter of answer with Miss Lewis.

Mrs. Bouslog: If we had a time set so that we would know what is permitted——

Judge Biggs: Well, I don't desire—none of us desire—to unduly hurry counsel. Of course our time is limited, at least so far as two of us are concerned, on this visit to this Territory, and suppose we take up the matter this way, first: How long would it take you to present your evidence in support of the preliminary injunction in this case?

Mrs. Bouslog: I don't think it is necessary, your Honor. I think the Court perhaps misunderstood me. Plaintiffs prefer to go forward with the hearing on the merits, because we agree that there would be little difference between the evidence on the hearing on evidence to support the preliminary injunction, and the final hearing, and we would be willing,—we don't ask very much time; we waive that; if we had the usual amount of time——

Judge Biggs: How much time do you estimate you would need to proceed?

Mrs. Bouslog: Do you mean how much time between the filing of the answer and——

Judge Biggs: Well, I think we may perhaps be able to hasten the filing of the answer. It seems to me in passing that the parties might adopt the not unusual course of stipulating that the charging parts to the answer are denied, or something of that sort. How soon can you have your witnesses here, and how long would it take to present the case?

Mrs. Bouslog: If your Honors would take a

short recess, so as we may discuss the problem of transportation from the other Islands, we may I think——

Judge Biggs: Well, now, I assume that there is a great deal here in the complaint which would be admitted by Miss Lewis.

Miss Lewis: Yes.

Judge Biggs: And Mr. Griffith. Certainly the first few paragraphs, that so and so and so, of certain nationality,—if it be pertinent, would certainly, I assume, be admitted. Why not counsel get together? First, is there a counsel room in this building?

Mr. Griffith: The library is open.

Judge Biggs: I would suggest a conference between counsel at this point. We want to give every opportunity to the parties to submit their evidence, but we do not want to unduly protract the hearings and spend some days in going into a number of matters which should be admitted. If necessary we will embark here on something resembling a pretrial procedure, in open court. Does that suggestion meet with your approval, Miss Lewis?

Miss Lewis: I wanted to answer, and I will make it very short, if possible. I am sorry Mr. Crockett went back to Maui. I will get him back here tomorrow. We will get our answer in under, I think, a couple of days, or around that. Would that be too much?

Judge Biggs: We don't want to limit you, but suppose we do this: Can't you give us an estimate, Mrs. Bouslog?

Mrs. Bouslog: I would think that it would take more than a day to put our evidence in.

Judge Biggs: You think it would take more than a day——

Mrs. Bouslog: I don't think it would take more than a day.

Judge Biggs: It is very hard to answer how long you would be in rebuttal?

Miss Lewis: Well, I think we would be quite some time, your Honor.

Judge Biggs: When you say "quite some time" what do you mean?

Miss Lewis: Maybe I do not understand the case properly at this point. I am just talking as I go along. I would think if we have to show all these circumstances which we have been discussing, on the facts, before we go to the merits; these incidents, so that the Court could understand fully what was proposed by the plaintiff to be done,—I mean, by the defendants to be done,—that is quite a sizeable job.

Judge Biggs: I doubt if it is as difficult a one as you may perhaps anticipate. Could you give us some illustration of what you mean?

Miss Lewis: In the District Magistrate's Court, when we presented our prima facie case, Mrs. Bouslog insisted that we have——

Judge Biggs: (Interrupting.) That record which was made before the District Magistrate, is there any reason, for example why that could not be stipulated into this proceeding?

Miss Lewis: I think that would be fine. That concerns 36 people; there are 11 others in that incident, and five in another incident, but we have their preliminary examination.

Judge Biggs: Would you have any objection to that course, Mrs. Bouslog?

Mr. Symonds: Your Honor, I think the best procedure is the one suggested by the Court. Our experience in attempting to stipulate with the Attorney General's office is that it has been difficult.

Judge Biggs: Well, difficult or not, I want you to try it in this case. I should think that there would be a very broad area in which you can agree, and the Court will take further steps, if necessary, to compel agreement in regard to matters which are merely trivial or repetitious.

Mr. Symonds: Then it would appear to be in order that we retire and try to find an answer to that question as to how broad that area is, and then we can come back and inform the Court.

Judge Biggs: Is there some convenient place in this building or do you have a convenient office? Could you go to the Attorney General's office?

Mrs. Bouslog: I think the library would be satisfactory, your Honor.

So far as the question that was asked, the question about stipulating to the introduction of the transcript——

Judge Biggs: Well, that transcript, of course, is a public document, and this Court is entitled to take judicial notice of it.

Mrs. Bouslog: No, sir, your Honor, the District Magistrate's court is not a court of record in the Territory.

Judge Biggs: This proceeding was before a district magistrate and there was a transcript made of it, and there were translations of it, were there not?

Mrs. Bouslog: Yes.

Judge Biggs: There were translations?

Mrs. Bouslog: It is all in English.

Judge Biggs: There was no shorthand taken, of the translations?

Mrs. Bouslog: Into Filipino—It is in English.

Judge Biggs: Oh, it is all in English, and it has all been transcribed?

Mrs. Bouslog: Yes it has, your Honor.

Judge Biggs: Well, it would seem to me that might well be a starting place for a stipulation, and how does it seem to you, Judge; does it seem so to you? The same thing would be true, I think, as with any other long record; that record is some 500 odd pages, of the proceedings before Judge Wirtz.

Judge Metzger: Yes, that would be.

Judge Biggs: That certainly is a matter in which the document is a public document, and one which we could take judicial notice of, and it might be that you might desire,—the parties might desire, to supplement that record in some way, but that should not take a great deal of time.

I am not quite sure, Miss Lewis, and I don't want to harass you with questions, because you have had no preparation on this subject,—but I am not

quite clear how far you would deem it necessary to go in respect to some of the matters that you might have in mind. We have referred to these proceedings before the Magistrate, if they could be stipulated in evidence, and this Court might consider them, why this would save time,—it would seem to me that a great deal of time would be saved and a great deal of needles repetition.

Miss Lewis: That would be perfectly correct. Of course there are the movies that were a part of that, that are not here; I could have them brought here.

Judge Biggs: What sized film are they?

Miss Lewis: 25 mm., but I recognized that is our problem.

Judge Biggs: You could show them?

Miss Lewis: We recognize it is our problem. It is our proof. It is a matter of time. It is hard for me to estimate because we haven't had a pre-trial. If that preliminary hearing, which involved 36 people, could include the 11, I mean, it could be deemed that they were also there at that hearing, that we would cover by the incident, that would be one thing; if they are going to insist that they are not bound by that evidence, you see, it would have to be proven over again.

Judge Biggs: Let's put it this way. I think a recess would be in order. Would you consult among yourselves and then inform the Court as soon as you have reached some field of agreement, or at least some definite area of disagreement. The Court

will stand in recess from 15 minutes to half an hour.

(Recess.)

Miss Lewis: I find we have made considerable progress, and we were greatly handicapped by Mr. Crockett's absence. Our office has been in touch with theirs, and there is a plane leaving Maui at 5:45, so I presume he could get on it, and then we will meet this evening, at 8 o'clock, and we ought to be able to report tomorrow. I suggest, if the Court would entertain that suggestion, that the Court give us an indication of the time we would have to prepare for trial.

Judge Biggs: Let me presently state my own position. I have reservations to leave for the mainland on Sunday, May the 2nd. Judge Harris hopes to be on the Lurline on May the 5th. If necessary, though I would hate to do it because of other engagements which I have on the mainland, in the 9th Circuit, and if reservations were available, I could probably move on to the mainland on a later date, but I am required to be in the East on May the 13th as I have to sit again in the Court of Appeals on May the 17th. So that I should very greatly appreciate it that the testimony in this case, the necessary testimony be taken, if it could be taken, by May 1st, or before, because I can see that counsel will desire some time for argument, even if they are going to file a written request for findings.

I think Judge Metzger's schedule is such he will make his schedule conform to ours as nearly as may

be. That is the time schedule with which we are faced. After the evidence is in, of course the necessity for pressing for time is largely eliminated. Of course the Court must and will render its decisions as promptly as it can.

Mrs. Bouslog indicated that she might need no more than a day, and have you any reason to revise that, Mrs. Bouslog?

Mrs. Bouslog: I haven't yet, your Honors. But of course we haven't gotten completely into the stipulation part of it.

Judge Biggs: Do you think you could get it all in in four or five days?

Miss Lewis: I know Mr. Crockett has a witness who is in and out on a ship.

Judge Biggs: You could take his deposition.

Miss Lewis: There are points like that I am simply not familiar with. If we can get him down here, we can report on it tomorrow.

(Conference between the Judges.)

Judge Biggs: Judge Metzger informs us that the Court will be prepared to go on tomorrow at ten, if that is agreeable with the parties.

Very well, the Court will stand adjournment until 10 o'clock tomorrow morning.

One other question. On this basis of the answer, I see no reason why it would not be entirely possible for you to enter a general denial to the charging parts of the complaint, by stipulation.

Miss Lewis: Well, what I would like to do is this, your Honor, insofar as we have stipulated, and

on matters we could stipulate on, yes, and then I would like to file an answer denying everything which we have not stipulated, and then I would like to add some further averments.

Judge Biggs: By way of answer?

Miss Lewis: In that answer, and that would complete it.

Judge Biggs: We will adjourn to 10 o'clock tomorrow morning.

(Adjourned to 10 a.m., April 20, 1948.)

Certificate

I Hereby Certify the above and foregoing, pages 1 to 11, inclusive, to be a full, true and correct transcript of the proceedings in the within-entitled matter taken on the afternoon on April 19, 1948, at the time and place herein set forth.

/s/ R. N. LINN,

Official shorthand reporter, 1st Judicial Circuit, Territory of Hawaii, acting as Official Reporter.

Honolulu, T. H., June 27, 1949.

[Endorsed]: Filed June 28, 1949 U.S.D.C.

[Endorsed]: Filed July 23, 1949 U.S.C.A.

[Title of District Court and Causes.]

TRANSCRIPT OF PROCEEDINGS

(April 20, 1948. Excerpt from proceedings.)

The Court (Judge Biggs): Now, to come back

to the ILWU cases. May the Court inquire what progress counsel were able to make at your conference of last night?

Miss Lewis: Shall I start in?

Mrs. Bouslog: Yes.

The Court: I beg your pardon?

Miss Lewis: I was talking to counsel, your Honor.

The Court: My apologies.

Miss Lewis: And asking if it was all right with them if I spoke first.

We did meet last night and dictated a rough draft of a stipulation in one of the cases, which counsel on the other side had not been over. They are trying to polish it up before looking at it. And then the other one would follow. I also have a rough draft of an answer in the case. Of course, that is my own proposition.

As to the amount of time required for proof, as far as our own case is concerned I would like to ask the Court, if it is not improper, to ask for a ruling as to what is really an issue of law. Or would that be improper?

The Court: No, it is not improper. Of course, since this Court will try these issues, I see no reason why we should not endeavor to define them as well as we can.

Do you agree, gentlemen?

The difficulty sometimes arises that another court differently composed defines the issues and sometimes the court which tries the issues may regard

the issues as something other than the court which manipulated the pre-trial proceeding. So I think we would be justified in making an order defining the issues as well as we could.

Miss Lewis: Yes.

The Court: Or indicating them, at least.

Miss Lewis: Certain facts will be stipulated and certain exhibits introduced by stipulation, and then each party will have some proof. Among our proof will be as follows: That we would like to show the Court the circumstances of the three occurrences, two at Lanai, the one in 1946, and to show to the Court that the plaintiffs are held as a result of conduct that they were principals in, in those events.

Now my question is as follows: Is it material to these cases to offer proof of the identity of all these different parties as actually having participated? To my mind that would be proceeding to the trial of the criminal case, and it would therefore seem to me not material; that it would be enough to clarify the issue if the events were set forth, and if it appeared that the police were holding these parties in connection with certain circumstances, that that was their basis for holding them, and not to go into what would amount, I submit, to a trial of the criminal cases, as to whether they actually did these things, were there and were identified, and those who rushed forward, as an example, at the wharf on July 14, 1947. But we would be perfectly willing to go into all of that.

The Court: Let's see what your opponent's view

is on that. Mrs. Bouslog, what do you think about that proposition?

Mrs. Bouslog: As far as we are concerned, the defendants can or do not have to show the identity of each one of the defendants. Of course our contention is that they were engaged in peaceful activity.

The Court: You are not directly answering the question. In a trial it is of great assistance for counsel, as officers of the court, to in effect state with the utmost frankness,—and do not think I am accusing you of lack of frankness—what their view is.

Do you think the defendants would fail in their defense if they did not show the actual participation of all the plaintiffs in this action?

Mrs. Bouslog: In part I think that is material. That is, the wholesale arrest of a large group of people, when only a small part was involved, may possibly be involved. It is a part of our contention that the unlawful assembly statute as applied by the Territorial officers under color of law is particularly a threat to a labor organization. That is, a mass arrest during the middle of a strike.

The Court: It would have to be stated, of course, and I assume the officers would state that these persons were all actually arrested or under indictment.

Mrs. Bouslog: That we stipulate to.

The Court: The only question then remaining is proof of the extent of the participation of the

individuals? Are you able or would you be able to carry that down as to individuals, that you would stipulate as to their action in the course of those incidents?

Mrs. Bouslog: No. We couldn't stipulate as action, no.

The Court: Why not?

Mrs. Bouslog: Because there would not be any agreement between the parties on what the action was.

The Court: Let's see. Just a moment. It was stated in argument here that one individual had either been pushed off the dock or jumped into the water.

Mrs. Bouslog: He is not a defendant.

The Court: Isn't he one of the parties?

Mrs. Bouslog: No. We wouldn't concede that he was pushed off the dock. As a matter of fact, he testified in trial that he jumped off.

The Court: All right. He jumped off.

Mrs. Bouslog: That is shown in the transcript.

The Court: He jumped off. But someone threw pineapples at him. A very heinous effect in the Islands here.

Mrs. Bouslog: Terrible.

The Court: Do we understand that there were some pictures taken of this disturbance, motion pictures?

Miss Lewis: I think the pictures concern the July 14th, 1947 incident only. Isn't that right?

The Court: Not after?

Miss Lewis: Excuse me.

The Court: Surely.

Miss Lewis: There are some still pictures in another case, of the 1946 matter.

The Court: Miss Lewis, you I assume would go forward and attempt to prove that the individual plaintiffs had in fact taken part in those disturbances? Is that correct?

Miss Lewis: Your Honor, we can do it that way. It is just a matter of time.

The Court: How were you planning——

Mrs. Bouslog (Interrupting): Excuse me, your Honor. I might make this suggestion. We possibly could do this by stipulating that if certain people appeared, that is, police officers, that they would testify that they saw these individuals there. In other words, we will stipulate that if they would bring in these witnesses, these witnesses would testify that those people were present, or something to that effect.

The Court: Is there any question of fact presented there where the credibility of the witnesses would be involved?

Mrs. Bouslog: Oh, yes, definitely.

The Court: How could we test it unless we had the witnesses before us. Test the credibility? We would have simply a stipulation on a piece of paper.

Pardon me, Miss Lewis. I interrupted you. How were you planning to proceed in respect to this?

Miss Lewis: What I wanted to do, I wanted to show the Court occurrences, so that the Court would

be able to see, and we think we can prove that there was a time when peaceful picketing stopped and something else started. And that the evidence will also show that these parties are being held on the basis of evidence that they participated in that something else that started when peaceful picketing stopped. That is what they are being held for, or what the threat consists of, so to speak. But we would be perfectly willing to go on and go into what that evidence is: That they are being held, that they did participate in that something else that started when peaceful picketing stopped. We would be willing to go on. It is just a matter of the Court's time. And that is why I submitted the question. It would seem to me at that point we really would be starting to try the criminal cases.

But I submit it for the Court's ruling.

The Court: It is a question of degree, I suppose, and it is none the worse for so being. What you actually planned to do, I suppose, is to prove that a point was arrived at where peaceful picketing stopped, as you put it, and something else began?

Miss Lewis: There would be an eye-witness describe the occurrences in connection with that matter. I might say, as I mentioned to the Court, we have a witness who is not always in town. We are looking for him. But with the exception of that difficulty, the proof would be eye-witness proof as to what the occurrences were.

The Court: Would those eye-witnesses be able to identify particular plaintiffs?

Miss Lewis: They would be able to identify some, but if it was necessary to identify all there are a number of witnesses.

The Court: How many?

Miss Lewis: Perhaps Mr. Crockett should talk on that subject.

The Court: Mr. Crockett, how many witnesses do you conceive to be involved to bring your case down to the ground, so to speak?

Mr. Crockett: If we have to prove every particular point, if the Court please, we would have to have about fifteen witnesses.

The Court: How many?

Mr. Crockett: About fifteen witnesses.

The Court: Fifteen?

Mr. Crockett: I would say at least that many.

The Court: It would take how long?

Mr. Crockett: We would take perhaps three or four days. We could, however, give the Court, as Miss Lewis has indicated, a picture of what actually happened there through the testimony of at least one witness who was present at the Paia incident and who was also present at the Lanai incident, and he was the investigating officer that went to the incident at Lanai. If that were all that were required, if the Court please, it would only take us one day to bring that particular witness here, and perhaps one or two other witnesses, just to substantiate or fill in some of the details as far as testimony as to proof of the Lanai incident.

The Court: We are of the opinion that testi-

mony of that sort so offered would in all probability be sufficient to prove the defendant's case in chief, that is, the defense in chief. It might be necessary for further witnesses to be offered by way of rebuttal, or something of that sort. But we think that probably would be enough to indicate the defendant's position.

Miss Lewis: That is what we wanted to submit.

The Court: Yes. What is the next question? Suppose you just remain seated.

Miss Lewis: Yes.

The Court: We are holding a trial conference. Just remain seated at the table. We will avoid all this getting up and sitting down.

Certificate

I, Carey S. Cowart, one of the official court reporters for the United States District Court, Territory of Hawaii, do hereby certify as follows: That the foregoing is a true and correct excerpt from transcript of proceedings in Civil Nos. 828 and 836, held in the above named court on April 20, 1948, before the Honorable Delbert E. Metzger, the Honorable John Biggs, Jr., and the Honorable George B. Harris.

6/21/48.

/s/ CAREY S. COWART.

[Endorsed]: Filed June 21, 1948 U.S.D.C.

[Endorsed]: Filed July 23, 1949 U.S.C.A.

In the United States District Court
for the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary, unincorporated association and labor union, et al,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, et al,

Defendants.

Civil No. 836.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary, unincorporated association and labor union, et al,

Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, et al,

Defendants.

TRANSCRIPT OF PROCEEDINGS

beginning April 23, 1948, before the Hon. Delbert E. Metzger, Hon. John Biggs, Jr., and Hon. George B. Harris, in the Federal Court, Honolulu, T. H.

Appearances:

BOUSLOG & SYMONDS, Esq.,
For the Plaintiffs.

WENDELL CROCKETT, Esq.,

RHODA V. LEWIS, Esq.,

ROBERT B. GRIFFITH, Esq.,
For the Defendants. [1*]

April 23, 1948

9:30 o'Clock A.M. Session

Upon the Clerk calling the cases, the following proceedings were had:

Judge Biggs: We can proceed.

Miss Lewis: If your Honor please, there are a few matters as to the state of the record that I would like to clear up at this time.

Judge Biggs: Very well.

Miss Lewis: As I understand it, the Court has reserved its decision in the application for the preliminary injunction and is hearing that application in consolidation with the application for a permanent injunction.

Judge Biggs: That is correct.

Miss Lewis: We made a motion to dismiss and for summary judgment with certain exhibits adopted or incorporated by reference. Since that motion

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*** Page numbering appearing at top of page of original Reporter's Transcript.**

was denied, we ask the Court to consider all of that material as an objection to the application for a preliminary injunction.

Judge Biggs: The Court so orders and will so consider the material.

Miss Lewis: As to the form of the answer, it is my understanding that in view of the stipulations that have been entered into, the Defendants do not object to the form thereof insofar as a general denial of matters not stipulated [2] has been used in that answer.

Judge Biggs: In other words, in every respect where you are not specifically answering, you are entering a general denial to the petition.

Miss Lewis: Yes. I would like the record to show that that matter of form is not objectionable to the Defendant.

Judge Biggs: Have you any objection to the form in which Miss Lewis is preparing and filing her answer?

Mrs. Bouslog: No, your Honor.

Judge Biggs: Very well.

Miss Lewis: The next matter is a little longer. Perhap the Court would like to have me hand it to the reporter and have it written into the record. The point is that in the stipulation it was agreed certain testimony taken before Judge Cristy and certain exhibits might be produced here. We reserved our objections and I want to put my objections into the record at this time.

Judge Biggs: Very well. Do they go to relevancy primarily?

Miss Lewis: Primarily, and also that in 836 we have Plaintiffs who could not make the challenges.

Judge Biggs: In 836?

Miss Lewis: We have Plaintiffs that did not make the challenges, that Judge Cristy heard. Shall I read my objections? [3]

Judge Biggs: I think if you offer them to the stenographer and let them be included, we will save time.

(Miss Lewis hands the Court and the reporter her written objections referred to, which document reads as follows:)

"Civil Nos. 828 and 836
Re Grand Jury

"Defendants object to the receipt or consideration of the testimony taken before the Honorable A. M. Cristy on the grand jury challenges made by Barbosa and others and the exhibits in that proceeding, on the ground that none thereof is material or relevant in these proceedings, and upon the following grounds:

"In Civil No. 828, the whole question of the composition of the grand jury is moot, and in any event the plaintiffs would have no recourse in this court until they had exhausted their remedies in the territorial courts and upon appeal therefrom.

"In Civil No. 836, there is no issue before the court because an attack on the composition of the grand jury cannot be made collaterally in federal court, and if not made in the territorial court at the first opportunity is waived. No such attack has

been made in the territorial court by the plaintiffs in Civil No. 836. Either plaintiffs have had an opportunity to present this issue in the territorial court and have waived it, or else they have had no opportunity and [4] can still present all contentions based on the constitution and laws of the United States, under the doctrine of Carter v. Texas, 177 U. S. 442. In any event plaintiffs must exhaust their remedies in the territorial courts and upon appeal therefrom.

"Defendants further object to the receipt or consideration in Civil No. 836 of the motions and challenges to the grand jury made by Barbosa and certain others, not parties in Civil No. 836, the orders and rulings of Judge Cristy in the proceedings held thereon, and the certificates or disqualification of Judge Wirtz and Order and Authorization to Judge Cristy, upon the grounds above stated and upon the further ground that the same are incompetent and immaterial in Civil No. 836, as they concern proceedings not taken by any plaintiff in that case.

"And defendants further call to the court's attention that challenges to individual members of the grand jury are not involved in these proceedings and the testimony and rulings relating thereto have no materiality or relevancy here. We object to the receipt or consideration of such testimony and rulings on that additional ground, as well as the grounds already stated. This specifically applies to the transcript at the bottom of page 80 beginning

with 'Mr. Resner' to page 88, line 11; bottom of page 409, beginning with 'court' to page 419 where the direct examination of Kenneth Auld begins; [5] and page 551 beginning with the word 'secondly' to page 554, line 15, as well as other matters scattered through the transcript."

Judge Biggs: I assume you are making no objection on the ground of hearsay.

Miss Lewis: That is the point. The form of the proof is what we did waive, that the witnesses are not here, we waived that.

Judge Biggs: Any objection on the ground it might be hearsay? You waive the question of hearsay?

Miss Lewis: Yes.

Mrs. Bouslog: No, your Honor, not on the ground that it might be hearsay. We stipulated it could go into the evidence subject to all legal objections.

Judge Biggs: You object on the ground it is hearsay?

Mrs. Bouslog: Well, I don't object,——

Judge Biggs (Interrupting): It is to your interest, I should think, not to object. I am not quite clear as to the position of counsel on this. You are referring here to the testimony taken before Judge Cristy?

Mrs. Bouslog: Yes.

Judge Biggs: And Miss Lewis objects that some of it is not pertinent, some of it is not revelant to certain of the Plaintiffs in one of the cases. Is there

any objection [6] on the part of counsel on the ground that it is hearsay?

Mrs. Bouslog: No.

Miss Lewis: Well, your Honor, perhaps we had better clarify our stipulation. I understood we had obtained one. If it doesn't go both ways, I may have to take some of it back.

Judge Biggs: I think Mrs. Bouslog waives any objection on the ground it is hearsay testimony.

Mrs. Bouslog: Yes.

Miss Lewis: We are not talking about this grand jury matter, but we have some testimony taken before the district magistrate on Lanai, and I thought we had agreed.

Mrs. Bouslog: I am agreed as to that, too.

Judge Biggs: In other words, all relevant legal objections are retained except the Plaintiff's objection of hearsay evidence.

Miss Lewis: Yes, your Honor. I understand my complete and formal objections will appear in the record, which I submitted.

Judge Biggs: Very well.

Mrs. Bouslog: Why I raised the question, we stipulated that the transcript of the hearing before the district magistrate could be received with no objection as to form but subject to all legal objections. They made the same stipulation with respect to the transcript. [7]

Judge Biggs: And Plaintiff's legal objection is the objection of hearsay.

Mrs. Bouslog: The reason why I raised the

question, when your Honor said "hearsay" was that there are attached to the various returns of the Defendants an affidavit, for example, of Assistant Chief Freitas, describing clearly events that are hearsay. Now where evidence appears on its face in affidavit form that it isn't a part of the records, that is, the transcript, we did not intend to waive hearsay objections as to that.

Judge Biggs: I am afraid that leaves us in a rather bad state. Mr. Freitas is going to testify tomorrow.

Miss Lewis: I think we have a slight misunderstanding. We have not, in our stipulation, included the affidavitt of Mr. Freitas. It is in the record as part of our motion to dismiss for summary judgment and now under the Court's ruling part of our objection in the preliminary injunction, but I recognize that it is not anything other than exactly that.

Mrs. Bouslog: That is all the question I had, your Honor.

Judge Biggs: Very well, we are ready to proceed. You were going to make a statement.

Mrs. Bouslog: As the Court knows, it is the Plaintiff's position that they are entitled to relief against the [8] Unlawful Assembly and Conspiracy Statute of the Territory, because it is on its face a restraint upon freedom of speech guaranteed by the First Amendment. It is the Plaintiff's contention that subject to a showing of irreparable injury that previous restraint inherent in the statute

itself entitles the Plantiffs to the relief sought under the Unlawful Assembly and Conspiracy laws. However, since there has been much evidence introduced or put into the record of a factual nature regarding possibly some violations of law, I want to make it clear from the outset that it has never been the Plaintiff's position before any Territorial court, and it is not now the Plaintiff's position that any members of labor unions who are guilty of minor infractions of the law, such as breaches of the peace or obstructions of the highway or disorderly conduct, are not subject to prosecution on the same basis that any other citizen is subject to prosecution. But the technique of the use of mass arrest under a serious felony statute carrying a penalty of 20 years is not according to the working people of the Territory the protection to which they are entitled. I wanted the Court to understand from the outset what the Plaintiffs' position was and why we introduce the evidence that we introduce.

Judge Biggs: One other point I am going to bring up. The Court will enter a formal order consolidating these causes for trial, and counsel may treat that as having been [9] done. It will be prepared during the course of the day.

Miss Lewis: As I understand it, what I said applies to both cases.

Judge Biggs: Yes, certainly.

Mrs. Bouslog: Your Honor, I am prepared now to begin to call my witnesses. I want to get the

Court's instructions; is it proper for counsel to remain seated?

Judge Biggs: Yes, you may take your choice, remain seated, or stand if you desire.

Mrs. Bouslog: Thank you. The first witness will be Jack Hall.

JACK W. HALL

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. My name is Jack W. Hall.

Q. What is your address?

A. I live at 2955 Oahu Avenue, Honolulu.

Q. What is your occupation?

A. I am Regional Director for the International Longshoremen's and Warehousemen's Union, and have been since the first of June, 1944.

Q. How long have you lived in the islands? [10]

A. I have lived here since 1935.

Q. Did you have any connection prior to 1944 with the ILWU?

A. Except for a two-year period in 1942 through 1943 and part of 1944, I have been associated in one way or another with the ILWU since its organization in 1937.

Q. What organization did the ILWU comprise in 1937?

(Testimony of Jack W. Hall.)

A. It was a part of the Inter-Island Longshoremen's Association, an affiliate of the American Federation of Labor.

Q. What group of workers did it cover at that time?

A. Longshoremen and warehousing workers.

Q. In 1944 when you became associated, what was the union engaged in doing at that time?

A. The local union was engaged in organizing the sugar workers.

Q. Did you assist in this organizational process?

A. After I became associated with the union, I became intensively active in connection with that work.

Q. Will you tell the Court how the union brought into its membership the sugar workers and the pineapple workers in respect to the times they were organized and the times of the completion?

A. Well, the bulk of the sugar workers were organized during the latter part of 1944 and the early part of 1945. For the industrial workers, that is those connected with mill operations, either directed elections or consent elections [11] were conducted by the National Labor Relations Board. Those elections we won by, I think, a majority of something like 97% of all eligible votes cast.

Q. Does the ILWU represent all the employees or some employees of all the sugar companies in the Territory?

A. All except two small companies of Kauai, Gay and Robinson, and the Waimea Sugar Mill Com-

(Testimony of Jack W. Hall.)

pany, employing approximately 250 workers, I believe.

Q. Does the ILWU represent a majority of the workers of the pineapple industry in the Territory?

A. That is true.

Q. Are you familiar with the financial structure of the union and the amount of money spent in organizing the union?

A. Yes, I am. I am not too sure what you mean by "organizing." If you mean by,——

Q. Organizing and administration of the union.

A. I know that in the period from November 1, 1943, to November 1 of 1947, the international union expended in the Territory slightly in excess of $350,000. We obtained that figure to present to the conference of sugar workers we held in Hilo early in January this year. It was prepared by our bookkeeping department.

Q. How much, what is the amount of money which it is necessary to have to administer the union for its purposes in the course of a year? [12]

A. If you mean by that the international union,——

Q. No, the local unions in the Territory?

A. Oh, I would say approximately $600,000 to $700,000.

Q. How is that money received? What is the source of that money?

A. The source of income is from a regular dues payment by the individual members.

(Testimony of Jack W. Hall.)

Q. In the islands?

A. In the islands, that is correct.

Q. So that a drop in membership affects the ability of the union to perform its functions?

A. Quite substantially.

Q. Can you give us a very brief picture of the wage structure or the wage situation in the Territory prior to the organization of the sugar and pineapple industry in the Territory?

A. Yes, I believe I can. I had opportunity to observe the figures, that is the wage rates that were being paid in the sugar industry as the result of my work on the War Labor Board and from personal knowledge. The so-called mill workers in the Territory in early 1945, before the first sugar agreement, were receiving a base pay of either 27½ in some cases and 28c an hour in other cases. In addition to that, they were receiving a 25% bonus based on the price of sugar, and together with that the so-called perquisites, that is, [13] housing, medical attention, fuel and water. The employees at that time were subject, some of them, to the Fair Labor Standards Act which provided for a 40c minimum.

The computations that were made by the industry brought the employees to the 40c minimum in most cases, but in some cases we found by suit that they were in violation of the minimum wage provisions of the law. As far as the field workers are concerned, the minimum rates were fixed under the

(Testimony of Jack W. Hall.)

Sugar Act of 1937 and set by the Secretary of Agriculture. They are matters of public record.

Q. (By Judge Biggs): Secretary of Agriculture of what?

A. Of the United States.

Q. Of the United States?

A. During the war years, I believe he was designated a war food administrator and signed in that capacity.

Judge Biggs: I see.

Q. (By Mrs. Bouslog): I show you a document that is entitled SD-169 War Food Administrator, Food Distribution Administration. Will you take a look at that and tell the Court what was the wage determination of the War Food Administrator for the sugar industry in 1943?

A. During the year 1943 the minimums were established on an average daily wage for a pay period of one month, which meant that on some days the wage could fall below that amount, and on other days it might be above, so long as at the end of the pay period it averaged this daily wage. The wage for adult male workers in harvesting operations was $1.84 per day. For adult female workers it was $1.38 per day. And in non-harvesting operations for adult males $1.61 per day, and for adult female workers $1.21 per day. And for work performed under so-called long-term contracts of cultivating and irrigation, an advance of not less than $1.72 per day for male workers; $1.29 for female

(Testimony of Jack W. Hall.)

workers, and for children between the ages of fourteen and sixteen $1.15 per day. For operators of mechanical equipment, tractor drivers, truck drivers, railroad brakemen, 24½ per hour. Operators of mechanical railroad and harvesting equipment other than tractor, 32c per hour; railroad firemen and conductors 26c per hour; railroad engineers 36c per hour.

In addition to these base rates, the employees received a bonus of 1½% for each dollar that the price of sugar on the New York market rose above $65. per ton. The average for the year 1944 was slightly below $75. per ton. Pardon me, for the year 1943. That meant that the employees, in addition to these base rates, received approximately a 15% bonus and the so-called perquisites.

Judge Biggs: Do you propose to offer this document in evidence?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: Any objection? [15]

Mr. Crockett: No objection.

Judge Biggs: That will be admitted. It need not be copied into the transcript. Let it be marked Plaintiff's Exhibit No. 1.

(Thereupon, the document referred to was marked Plaintiff's exhibit No. 1 and received in evidence.)

(Testimony of Jack W. Hall.)

PLAINTIFF'S EXHIBIT No. 1

Issued June 25, 1943

WAR FOOD ADMINISTRATION

Food Distribution Administration
Sugar Branch
Washington, D. C.

Determination of Fair and Reasonable Wage Rates for Persons Employed in the Production, Cultivation, or Harvesting of Sugarcane in Hawaii During the Calendar Year 1943.

Pursuant to the provisions of subsection (b) of section 301 of the Sugar Act of 1937, as amended, and Executive Order No. 9322, issued March 26, 1943, as amended by Executive Order 9334, issued April 19, 1943, the following determination is hereby issued:

Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Hawaii during the calendar year 1943. The requirements of section 301 (b) of the Sugar Act of 1937, as amended, shall be deemed to have been met with respect to the production, cultivation or harvesting of sugarcane in Hawaii during the calendar year 1943, if all persons employed on the farm during that period in the production, cultivation or harvesting of sugarcane shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates not less than the following:

(Testimony of Jack W. Hall.)

(a) Wage rates during the period January 1, 1943, to June 30, 1943. For all work performed during the period beginning January 1, 1943, and ending June 30, 1943, the average daily wage for each laborer for each pay period (including bonus payments) as provided in the determination for the calendar year 1942 (S. D. No. 131, issued April 24, 1942), or the rate paid or the rate agreed upon between the producer and the laborer, whichever was highest.

(b) Wage rates during the period July 1, 1943, to December 31, 1943. For all work performed during the period beginning July 1, 1943, and ending December 31, 1943:

	Average daily wage for each laborer for each pay period (not exceeding 1 month) per 8-hour day.
(1) Harvesting operations; time basis. Cutting, cutting and packing, packing, packing and fluming, fluming, piling, hand loading and hauling sugarcane, laying portable track, laying portable flumes, and other harvesting operations not elsewhere provided for:	
Adult male workers	$1.84
Adult female workers	1.38
(2) Non-harvesting operations; time basis. (i) Planting, cultivating, fertilizing, irrigating, brooming,[1] and other non-harvesting operations not elsewhere provided for:	
Adult male workers	1.61
Adult female workers	1.21
(ii) For work performed under long term cultivation and irrigation agreements, an advance of not less than:	
Adult male workers	1.72
Adult female workers	1.29

[1]So-called brooming done directly in connection with the operation of mechanical harvesting equipment shall be considered as covered under sub-paragraph (1). Other brooming is considered as non-harvesting for the purpose of this determination.

(Testimony of Jack W. Hall.)

	Daily wage per 8-hour day
(3) Children 14 to 16 years; time basis. For all work listed under (1) and (2) with maximum time of employment in any one day not to exceed 8 hours (shorter days in proportion)	$1.15

	Cents per hour
(4) Operators of mechanical equipment.	
Tractor drivers, truck drivers, railroad brakemen	24.0
Operators of mechanical loading and harvesting equipment (other than tractors)	32.0
Railroad engineers	36.0
Railroad firemen and conductors	26.0

(5) On a piece rate basis. For all work performed on a piece rate basis, the piece rates shall be the rate agreed upon between the producer and the laborer but in no instance shall the average daily wage for each laborer for each pay period be less than the time rate prescribed under this paragraph (b) for the applicable operations. Piece rates for the same operations shall be the same whether the work is performed by adult males, adult females, or children between 14 and 16 years of age.

(6) Wage increases. For each month during the period July 1, 1943, to December 31, 1943, both inclusive, the straight time earning of employees who are covered in this determination shall be increased by one and one-half per cent for each one dollar increase in the price of sugar above $65.00 per ton. For purposes of determining the amount of increase, the average New York daily (including Sundays and Holidays) market price per ton of 96° sugar, Hawaiian basis, for the period beginning with the 16th day of the preceding calendar month and ending with the 15th day of the current calendar

(Testimony of Jack W. Hall.)

month, shall be used. These increases shall be applied to the earnings after the wage rates as outlined under subparagraphs (1) to (5), inclusive, have been complied with.

(c) Annual average payments for the calendar year 1943. Subject to the provisions of paragraphs (a) and (b), the annual average payment on each farm for all adult workers, excluding operators of mechanical equipment and workers who are paid a monthly salary of $100 or more shall be:

	Per 8-hour day
(1) For work performed in harvesting operations	$2.15
(2) For work performed in non-harvesting operations	1.61

In calculating the annual averages the earnings of adult females shall be given a weight of four-thirds.

(d) General provisions. (1) The wage increase provisions of this determination may, upon appeal to the War Food Administrator, be modified as to any producer who is able to establish that the payment of such increases, or any part thereof, will, under present wartime conditions, work an undue hardship on such producer, or seriously impede the production of sugarcane on the farm.

(2) If the producer and laborer agree upon a wage for any operation, or combination of operations, higher than that prescribed in this determination, payment in full of the amount agreed upon must be made to qualify the producer for payment.

(3) In addition to the foregoing wages of this

(Testimony of Jack W. Hall.)

determination, the producer shall furnish the laborer, without charge, the perquisites customarily furnished by him, such as a house, garden plot, and similar incidentals, unless the furnishing of such is restricted by military authority.

(4) The producer shall not, through any subterfuge or device whatsoever, reduce the wage rates to laborers below those determined above.

Issued this 25th day of June, 1943.

JESSE W. TAPP,
Acting War Food
Administrator.

Issued January 21, 1944

WAR FOOD ADMINISTRATION

Office of Distribution
Sugar Branch
Washington, D. C.

Determination of Fair and Reasonable Wage Rates for Persons Employed in the Production, Cultivation, or Harvesting of Sugarcane in Hawaii During the Calendar Year 1944

Pursuant to the provisions of subsection (b) of section 301 of the Sugar Act of 1937, as amended, and Executive Order No. 9322, issued March 26, 1943, as amended by Executive Order 9334, issued April 19, 1943, the following determination is hereby issued:

(Testimony of Jack W. Hall.)

Fair and reasonable wage rates for persons employed in the production, cultivation, or harvesting of sugarcane in Hawaii during the calendar year 1944. The requirements of section 301 (b) of the Sugar Act of 1937, as amended, shall be deemed to have been met with respect to the production, cultivation, or harvesting of sugarcane in Hawaii during the calendar year 1944, if all persons employed on the farm during that period in the production, cultivation, or harvesting of sugarcane shall have been paid in full for all such work and shall have been paid wages in cash therefore at rates not less than the rates established for the period July 1, 1943, to December 31, 1943, in the "Determination of Fair and Reasonable Wage Rates for Persons Employed in the Production, Cultivation, or Harvesting of Sugarcane in Hawaii during the Calendar Year 1943," issued June 25, 1943, except that the annual average wage per farm for all harvesting and non-harvesting operations combined, after payment of wage increases under paragraph (b) (6) of said determination, shall not be less than $2.40 per eight-hour man-day.

In addition, the general provisions of paragraph (d) of the aforesaid determination shall apply for the calendar year 1944.

Issued this 21st day of January, 1944.

ASHLEY SELLERS,
Assistant War Food
Administrator.

Admitted.

(Testimony of Jack W. Hall.)

Q. (By Mrs. Bouslog): This shows for harvesting operations. Those are people not covered by the National Labor Relations Act, is that correct?

A. That is correct.

Q. That shows $1.84 per day as of 1943 as fixed by the War Food Administrator. You say 15% bonus approximately was in effect at that time?

A. That is correct.

Q. Can you tell the Court what the approximate daily wage of plantation common laborers or plantation harvesters is at the present time?

A. Well, it is well in excess of $8.00 per day.

Q. What was the purpose for which the International Longshoremen's and Warehousemen's Union was organized in the Territory?

A. Well, to improve the material well-being of the workers. That is in terms of improving their standard of living, to give them security in their employment both in terms of the [16] elimination of discrimination and favoritism and also for social reasons, such as improving their social welfare.

Q. How does the International Longshoremen's and Warehousemen's union attempt as a labor organization to achieve its purposes?

A. Primarily by the process of collective bargaining with the employers of the union members.

Q. What other means are available if negotiations fail?

A. Well, if negotiations fail, the usual practice is to attempt to obtain mediation or conciliation by

(Testimony of Jack W. Hall.)

some third party, and then an offer of arbitration, which we have made at all of our major disputes with the employers in this Territory.

Q. (By Judge Biggs): Is there any provision for arbitration in your contracts?

A. The only provision for arbitration in the contract is a provision for arbitration on disputes over the interpretation of the agreements. There is no provision for arbitration of any of the issues in dispute, but because of the consistent refusal of the employers to arbitrate in this Territory, despite the fact that it is the public policy both of the Territory as announced in the Act creating the Territorial Department of Labor and in Federal statutes, we have been left with but one alternative. When the union and the employers are unable to agree, there remains either for the union [17] to accept the employers' proposal, or to strike. There is no alternative.

Q. (By Mrs. Bouslog): Has any company or anyone in either the sugar or pineapple industry ever submitted to negotiations a question involving a wage issue?

Mr. Crockett: To which we object, if the Court please, as being incompetent, irrelevant and immaterial to the issues in this case. It is speculative.

Judge Biggs: We will overrule the objection. Of course, under the new Civil Rules, you do not need to note an exception. Answer the question.

(Testimony of Jack W. Hall.)

Mrs. Bouslog: Will you repeat the question, Mr. Reporter?

(The question was read by the reporter.)

A. You don't mean "negotiation," do you?

Q. No, I said has any employers in either the sugar or pineapple industry in the Territory ever agreed to submit to arbitration a wage issue?

A. No, they have not, even though we have had recommendations that such be done by government conciliators.

Q. So that the net result of a refusal to arbitrate is that the strike weapon is the only weapon which the union has available?

A. That is a correct statement.

Q. Now, you were Regional Director of the International Longshoremen's and Warehousemen's Union during both the [18] sugar strike of 1946 and the pineapple strike of 1947?

A. That is correct.

Q. During the pineapple strike and the sugar strike, did the Unlawful Assembly Statute of the Territory come to your attention?

A. They were applied against members of our union in both disputes.

Judge Harris: I didn't get the question.

(The question was read by the reporter.)

A. I have answered the question.

Judge Biggs: The answer was yes.

Q. (By Mrs. Bouslog): How did it come to your attention?

(Testimony of Jack W. Hall.)

A. Well, during the sugar strike a considerable number of our members were charged with the violation of the Unlawful Assembly Statute, and because I was in consultation almost daily with the elected strike committee, we were informed by the workers on Maui that the charge had struck almost, you might describe it as terror into the workers involved there, because they felt that for carrying on legitimate picket activity and to face a sentence of twenty years meant that everything was being thrown at them, and the strike could not be effective.

Following receipt of that information I went to Maui myself and consulted with the strike committee on that island and assured them that we would have our attorneys do [19] everything possible to contest the constitutionality of such a severe statute, and we were able to hold our ranks together at that time, although I must frankly admit today the situation was quite shaky on Maui. We were able to come through the strike successfully in sugar.

Q. Did it have any effect on the pineapple dispute?

A. I think it was perhaps the major factor which caused us to lose the strike. I was, in pineapple as in sugar, in all discussions involving around the strategy of the union from day to day, and when the strike leaders on Lanai were arrested along with a large number of the workers and faced with these severe penalties, the workers on all islands were very much affected and felt that it would be

(Testimony of Jack W. Hall.)

impossible to win the strike facing constant mass arrest, and therefore it became the judgment of the strike committee in which I participated that the strike should be called off at once until a determination was made on whether ordinary picketing could be carried on in this Territory without being subjected to severe felony charges.

Q. What is the effect on the membership of the union if a strike results in no gain to the union?

A. Well, obviously they become demoralized and lose confidence in the ability of the union to obtain gains for them or even to retain what they have gained, and we lose membership. [20]

Q. Calling your attention to the recent reopening of the longshore contract in the Territory, did the felony statutes have any——

Judge Biggs: Longshore?

Q. Did the unlawful assembly statute have any effect on the determination of what the union would do in that case? A. Yes.

Judge Biggs: Now you are going a little far afield, aren't you? Is that necessary in this case? Is it pertinent?

Mrs. Bouslog: Yes, your Honor, we are showing that as far as the union plaintiffs are concerned, that the whole union structure——

Judge Biggs: When you say "longshoremen" what do you mean?

Mrs. Bouslog: That is part of this same union.

(Testimony of Jack W. Hall.)

Judge Biggs: Yes, but would you define it to the Court, please?

Mrs. Bouslog: The longshore workers are a separate local of the ILWU. They have sugar workers, longshore workers, pineapple workers and miscellaneous and allied workers.

Judge Biggs: Very well, proceed.

Mr. Crockett: We object to the question because it calls for an opinion of the witness involving something that may happen in the future, or purely speculative.

Judge Biggs: I thought he was referring to a strike or a situation which had already come to pass. [21]

Mrs. Bouslog: That is correct, your Honor.

Judge Biggs: It isn't pertinent or directed to the future.

Q. (By Mrs. Bouslog): I mean in the determination of what the union would do in the longshore reopening, did the Unlawful Assembly Statute play any part in the discussions?

A. Yes, it did. The longshoremen under their present contracts with the waterfront employers had a recent wage opening and at that time attempted to raise the wage rates for longshoremen in the Territory to the wage rates on the mainland, the longshoremen in Hawaii being the lowest paid in any American seaport. The membership was extremely militated by the negotiating committee

(Testimony of Jack W. Hall.)

when it got together in the face of the employers' refusal to bring the wage structure up in the Territory and had to make a decision on whether or not to accept the employers' proposal or to strike, arbitration being refused, and in the discussion with the negotiating committee we had to come to the conclusion that it would be in effect suicide for the union to attempt to strike with such a statute hanging over their heads, a statute that could easily be invoked and has been in our opinion, or where there have been minor disturbances that might have been provoked by agents provocateur.

Q. Are you familiar with the housing situation on the various plantations in the sugar and pineapple industry?

A. Just what do you mean by that? [22]

Q. Are you familiar with the manner in which employees are furnished housing in the Territory?

A. Yes, in the sugar and pineapple industries, except for the Hawaiian Pineapple Company, the employees rent their houses from their employers, by and large. There are a few exceptions.

Q. How extensive is the system of company towns throughout the pineapple and sugar industry in the Territory? A. It is almost universal.

Q. And if an employee is discharged from the plantation is there any other housing available for him to move to on that island?

A. Usually not, unless he lives quite close to say

(Testimony of Jack W. Hall.)

a city like Wailuku or a city like Hilo, and I understand housing is a little bit difficult even there.

Q. Is there any other kind of employment for plantation workers in the Territory if they are discharged from their employment as plantation workers?

A. Well, today I think it is safe to say practically none. Many of the plantations have long waiting lists of applicants for employment, and there is no large industry on any of the outside islands that can absorb employees.

Judge Biggs: You say there is or is not?

A. There is not. We have had a great deal of experience in that connection in recent months on either the liquidation of plantations or the merging of the plantations where, because [23] of increased efficiency in operation less employees are required and men are laid off. One is the merger of the Grove Farm and Koloa on the island of Kauai where some 100 workers were separated from their employment. True, they were given severance pay in nominal amounts, but they were unable on that island to find employment, by and large. Many of those are workers that are far from, as they are described in the Territory, superannuated. Some of them are just around 40 years of age and can't get jobs and they are now on the relief rolls.

Q. The two incidents, Mr. Hall, involved in these cases were out of sugar and pineapple strikes.

(Testimony of Jack W. Hall.)

Will you describe for the Court the state of the negotiations between the parties at the time the strike occurred in the sugar industry in 1946?

A. Well, prior to the sugar strike in 1946 we had about twenty issues on dispute. I am not sure I can recall all of them, but the basic issues in dispute revolved around the wage question. We were asking for 65c minimum wage. That is exclusive of perquisites, a minimum increase for all employees of 18½c an hour, and the elimination of a differential on the island of Hawaii where workers have been receiving 2½c an hour less than on other islands. That was the major issue, and the others were subsidiary.

Q. What was the employer's last offer before the strike [24] took place?

A. They offered 6½c on a classification system that they insisted we accept, and finally a minimum of 5c per hour for all employees.

Q. Was a strike vote taken on the last employer wage offer before the sugar strike?

A. Yes, it was.

Q. What was the approximate percentage vote throughout the sugar workers in the Territory?

A. I think it was well in excess of 97% in favor of the strike.

Q. And what was the hourly increase in rate of wage per hour at the end of the 79 day sugar strike? A. You mean average?

Q. Yes, the minimum.

(Testimony of Jack W. Hall.)

A. Well, I think the minimum cash increase that any employee received after payment of house rent and for his other perquisites, that is, fuel, water and medical attention, was 16½c per hour, but the average increase in the industry was in excess of 20c per hour after payment of housing and other perquisites.

Judge Biggs: Mrs. Bouslog, to fix the time, what are the documents?

Mrs. Bouslog: The documents are the 1947 agreement between the sugar industry of the Territory. It is an industry-wide [25] agreement, between the industry and the International Longshoremen's and Warehousemen's Union.

Judge Biggs: I think we are going a little too much into detail. We are trying constitutional issues.

Mrs. Bouslog: I was going to put them into the record to avoid going further into detail. I am almost through with him. This is a copy of a letter directed to the Hawaiian Sugar Planters Association, Alexander and Baldwin Building, July 11, 1946, which describes the exact state of the record between the employers and employees before the sugar strike of 1947.

Judge Biggs: Has Miss Lewis seen these?

(Mrs. Boulog shows the documents to Miss Lewis.)

Q. (By Mrs. Bouslog): I show you a copy of a document marked "Official copy, Agreement by and

(Testimony of Jack W. Hall.)

between Waialua Company, Ltd., and ILWU Local 145." Is this the same agreement that was negotiated during the first sugar negotiations between the union and the sugar industry?

A. Yes, this is the agreement between one of the sugar plantations and the union which was negotiated during 1945. The first agreement is generally identical with the agreements we negotiated with each of the other sugar companies.

Mrs. Bouslog: I will offer it for the record.

Judge Biggs: Any objection?

Mr. Crockett: None for that.

Judge Biggs: Very well, it will be admitted as Plaintiff's [26] Exhibit No. 2.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 2 and received in evidence.)

Q. (By Mrs. Bouslog): I show you a document marked 1947-1948 agreement between ILWU and Hawaii Sugar Industry. Is that the contract now in force between the sugar industry and the union?

A. I might correct the record to point out that while the contract is industry-wide as to form, there are individual contracts with each of the companies. Otherwise your question states the facts, with the exception that the wage rates are 8c per hour higher than indicated here.

Judge Biggs: What document is that, please?

Mrs. Bouslog: That is 1947-1948 agreement between the union and Hawaiian Sugar Industry.

(Testimony of Jack W. Hall.)

Q. (Mrs. Bouslog): Now, I show you a——

Judge Biggs: Just a moment, please, any objection?

Mr. Crockett: We have no objection to it except and I believe prior to the time this agreement was while the indictments in question occurred in 1946, I believe prior to the time this agreement was entered into.

Judge Biggs: I think we will receive. The objection is overruled. Let it be marked Plaintiff's Exhibit No. 3.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 3 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 3

1947-48

AGREEMENT

between the
International Longshoremen's and
Warehousemen's Union
and
Hawaii's Sugar Industry

Section 7.
Conversion of Perquisites and Minimum Guarantee

Simultaneously with the installation of new wage rates as provided in Section 6, all perquisites will be eliminated and employees will be charged for

(Testimony of Jack W. Hall.)

rent and other perquisites in accordance with the attached Exhibit "E." Each individual who is paying rent will have his monthly rental divided by 208 and if the resulting amount, subtracted from his per-hour increase, leaves him less than the following guarantees, his rate will be increased by the amount of the difference.

Status	Minimum Net Guarantee
Single	19.0 cents per hour
Married	20.0 " " "
" 1 Dependent	21.0 " " "
" 2 Dependents	22.0 " " "
" 3 "	22.0 " " "
" 4 "	23.0 " " "
" 5 or more	23.5 " " "

Dependents shall be defined to mean the following persons living on the plantation: (1) Children under sixteen (16) years of age, (2) children under eighteen (18) years of age who are attending school, and (3) aged and infirm persons who are recognized as dependents by the plantation.

The family and dwelling status and regular wage rate of each employee will be determined as of November 19, 1946, and his regular rate will be adjusted as of such date to reflect the guarantee so established. Subsequent changes in his family or dwelling status will not affect his wage rate. New Hires will not receive the minimum guarantee but will be hired at the classified rate.

(Testimony of Jack W. Hall.)

In determining the rental amount for the purpose of applying the minimum guarantee unmarried persons renting separate quarters will be charged rentals applicable to such quarters.

In the case of family dwellings occupied by more than one plantation wage earner, the rental of such dwelling for the purpose of the above computation only will be apportioned equally among such regular wage earners.

In the case where a house is occupied both by plantation wage earners and one or more non-plantation wage earners who are paying rent to the plantation for such occupancy, the amount of the house rent to be charged the plantation wage earner for the purpose of the above computation only shall be reduced by the amount of the former rent collected from the non-plantation workers.

It is understood that the rentals for family dwellings are subject to possible adjustment up or down on the basis of the conclusions and recommendations of the appraiser or appraisers in accordance with Exhibit F. Pending such adjustment, the rental charge to any employees affected by the minimum net guarantee will be temporarily fixed at a maximum of 10 per cent below the appropriate rent figures shown on the rental schedule and the employee's premium rate fixed accordingly, subject to adjustment on the final determination of rentals by the appraiser at which time both the rent and wage rate will be adjusted in accordance with said determination.

(Testimony of Jack W. Hall.)

Section 18

Discharge

(a) Employees shall be subject to discipline or discharge by the Company for insubordination, pilferage, drunkenness, incompetence, failure to perform the work as required, violation of the terms of this agreement or failure to observe safety rules and regulations, and the Company's house rules which shall be conspicuously posted. Any discharged employee shall, upon request, be furnished the reason for his discharge in writing. Any employee who has not had six (6) months of service with the Company may be summarily discharged.

(b) The Company agrees to notify the local union representatives of proposed changes in house rules prior to the posting of such new rules and to discuss such changes with the union representatives prior to their application, it being understood, however, that in all cases the final decision shall be left to Management.

It is also understood that the Company will undertake a review of existing house rules with a view to eliminating those that are obsolete or inapplicable. Such reviews will be discussed with employee representatives with the understanding that in all cases Management's decision shall be final.

In the event of conflict between the house rules and provisions of this agreement, the agreement will prevail.

(Testimony of Jack W. Hall.)

Section 19

Grievance Procedure

When any employee covered by the terms of this agreement, or the Union believes that the Company has violated the express terms of this agreement and that by reason of such violation his or its rights arising out of such agreement have been adversely affected, he or it, as the case may be, shall be required to follow the procedure hereinafter set forth in presenting the grievance.

Step 1. The grievance may be presented by the employee concerned to his immediate supervisor or it may be presented by a representative of the Union acting in the employee's behalf to the employee's immediate supervisor who will give his answer within forty-eight (48) hours following the presentation of the grievance. At this step in the procedure, the grievance may be presented either orally or in writing and in the discretion of the employee's immediate supervisor may be answered either orally or in writing. The Company promptly upon execution of this agreement, will provide the Union with a list of the supervisors, by Company operations, who will represent Management at this step in the grievance procedure, and will thereafter promptly advise the Union regarding any changes in connection therewith.

Step 2. If the grievance is not disposed of in the first step, the complainant employee or a representative of the Union acting in his behalf may

(Testimony of Jack W. Hall.)

present the grievance to the employee's..... (Division or Department Head) who will give his answer either orally or in writing within seventy-two (72) hours. At this step in the procedure, the grievance may be submitted either orally or in writing. The Company, promptly upon execution of this agreement, will provide the Union with a list of the individuals who will represent Management at this step in the grievance procedure, and will thereafter promptly advise the Union regarding any changes in connection therewith.

Step 3. If the grievance is not disposed of in the second step, the complainant employee may either present the grievance directly or through the Executive Committee of the Union acting in his behalf to the Industrial Relations Committee of the Company. At this step in the procedure, the grievance must be submitted in writing and the Industrial Relations Committee will answer the grievance in writing within one week following presentation of the written grievance to the Committee. The Company promptly upon execution of this agreement will inform the Union of the composition of the Industrial Relations Committee and will keep it informed of any changes therein.

Step 4. If the grievance is not disposed of in step three, it may be taken up in writing either by the employee directly or through the Executive Committee of the Union acting in his behalf at a meeting with the manager or his representative. Meet-

(Testimony of Jack W. Hall.)

ings with the manager shall be scheduled when necessary to resolve grievances appealed to that step of the procedure. After notification is received, meetings shall be held within one week. The Manager's written answer to written grievances shall be given within one week following the meeting.

Step 5. Any dispute involving the meaning, interpretation or application of the terms of this agreement which is not disposed of in Step 4 may be submitted to the Arbitrator in accordance with Section 20.

The Union promptly upon execution of this agreement will provide the Company with a written list of its representatives, who will be empowered to act in an employee's behalf in presenting or investigating grievances in accordance with the procedure set forth herein, and will thereafter promptly advise the Company of any changes that are made.

International Union representatives may be present in meetings of the third step and succeeding steps of the grievance procedure.

The Company will not be required to consider any grievance involving a single incident which has not been presented to the Company within fourteen (14) days following the date of the alleged occurrence of the incident. The Company will not be required to consider any grievance involving an alleged continuing situation or alleged series of repeated identical incidents which have not been presented to the Company within fourteen (14) days

(Testimony of Jack W. Hall.)

following the date on which the situation or incident last occurred.

Failure of the Company to answer a written grievance within the time limits prescribed in each step of the grievance procedure shall permit reference of the case to the succeeding step of the procedure following the expiration of the time limits.

The Company shall not be required to consider any grievance case in which the employee or the Union acting in his behalf does not refer the case to the succeeding step of the grievance procedure within fifteen (15) days following the delivery of written decisions by the Company in Step 3 or in succeeding steps of the grievance procedure.

In the absence of authorization to the contrary grievances are to be presented and considered outside of working hours. It is understood, however, that where reasonable and where possible without undue loss of productive time and interference with operations authority will be extended to present grievances within working hours.

Section 20

Procedure Before Arbitrator

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are hereby appointed as a panel of arbitrators. In

(Testimony of Jack W. Hall.)

the event a dispute arises concerning the application or interpretation of the terms of this agreement which cannot be settled pursuant to the provisions of Section 19, the dispute shall be submitted to one of the arbitrators who shall be chosen as follows:

Each party may strike two names from the panel and the remaining arbitrator shall serve in the case. All decisions of the Arbitrator shall be limited expressly to the terms and provisions of this agreement, and in no event may the terms and provisions of this agreement be altered, amended or modified by the Arbitrator. The Arbitrator shall receive for his services such remuneration as, from time to time, shall be acceptable to him and agreed upon by the parties hereto. All decisions of the Arbitrator shall be in writing and a copy thereof shall be submitted to each of the parties hereto. All fees and expenses of the Arbitrator shall be borne equally by the Union and the Company. Each party shall bear the expenses of the presentation of its own case.

The complainant in every hearing before the Arbitrator shall have the burden of proving his case by a preponderance of the evidence, and, in general, judicial rules of procedure shall be followed at such hearings but the Arbitrator need not follow the technical rules of evidence prevailing in a court of law or equity.

Admitted.

(Testimony of Jack W. Hall.)

Q. (By Mrs. Bouslog): I have a letter addressed to Hawaiian [27] Sugar Planters Association, purporting to be signed by you, dated July 11, 1946; does this letter—will you tell us what this letter contains?

Judge Biggs: Why not simply put it in, Mrs. Bouslog? I think you are getting into too great detail. Are you going to offer it?

Mrs. Bouslog: I would like to offer this for the record.

Judge Biggs: Does the witness identify it as a letter under that date signed by him?

Mrs. Bouslog: That is correct.

Judge Biggs: Any objection?

Mr. Crockett: We object to it, if the Court please, for the reason that from my examination of that it seems to be matters later incorporated into the agreement and definitely not material.

Judge Biggs: We will overrule the objection and treat your objection as a motion to strike; if it appears to the Court that is irrelevant, the Court will strike it out. Let it be marked Plaintiff's Exhibit No. 4.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 4 and admitted in evidence.)

Q. (By Mrs. Bouslog): Now, in relation to the pineapple dispute that existed in 1947, will you state briefly what situation was reached between the employers and the union prior to the strike? [28]

(Testimony of Jack W. Hall.)

A. The employers had made a counter-proposal offer of 10c per hour on classifications and a minimum increase of 5c per hour to our demand for a 25c an hour increase.

Q. Was a strike vote conducted in the pineapple industry on the basis of the last employer offer?

A. Well, the employers may have made some slight modifications in their position after the strike vote was taken, but the strike vote was taken on what was substantially the employer's last offer.

Q. And was there a vote to authorize the negotiating committee to call a strike?

A. That is correct.

Q. At what time did the strike occur?

A. I'm sorry. I don't recall the exact date. It was, I think, July, the early part of July.

Q. (By Judge Biggs): Of what year, please?

A. 1947.

Mrs. Bouslog: I can——

Judge Biggs: Do you know the date?

Mrs. Bouslog: Yes.

Judge Biggs: Lead the witness then.

Q. (By Mrs. Bouslog): Between July 10th, let's see, the negotiations were terminated sometime in the month of July, is that right?

A. That is correct. [29]

Mrs. Bouslog: Our petition alleges, your Honor

Judge Biggs: Is that date agreed to as the date?

Miss Lewis: Between the 10th and the 15th, yes.

(Testimony of Jack W. Hall.)

Mrs. Bouslog: And it has been stipulated already.

Judge Biggs: It is agreed to; all right.

Q. (By Mrs. Bouslog): How long did that strike last? A. Five days.

Q. And it was the unlawful assembly and conspiracy statute that affected the decision to return to work in that strike?

A. I so testified earlier.

Mrs. Bouslog: I have no further questions.

Judge Biggs: Cross-examine, Mr. Crockett.

Mr. Crockett: May we take a little recess at this time, your Honor?

Judge Biggs: Yes, we will take a five-minute recess.

(Recess.) [30]

Cross-Examination

By Mr. Crockett:

Q. Mr. Hall, you stated that the wages of the sugar workers before the union came in was about 27 to 28 cents an hour, plus a bonus of 25%, plus perquisites. Now tell us what those perquisites included. Could you do that?

A. Yes, I could. They included, as I testified earlier, housing accommodations, fuel, water and medical attention.

Q. And the medical attention, did that also include hospitalization? A. Of course.

Q. And did that hospitalization, as far as you

(Testimony of Jack W. Hall.)

know, include just for the worker or did that include his family, regardless of size?

A. It includes his family regardless of size.

Q. And in regard to taxes, the income taxes and other taxes which were payable by the worker, and his income particularly, do you know whether the tax base included the value of the perquisites, or isn't it a fact that they were not computed on the perquisites that were received by the worker?

A. The worker did pay taxes, so far as the Social Security was concerned, on the perquisites.

Q. How about the other taxes?

A. I am not sure I know the answer to that.

Q. As to the income tax do you know the answer? [31]

A. I am not sure I know the answer.

Q. All right. You gave us in detail the wage table of the sugar workers prior to the coming of the union into the picture. How about the pineapple workers; what were their wages?

A. I don't recall that I testified to that on direct examination.

Q. No, you did not, as to the pineapple workers.

A. I am willing to answer the question.

Q. (By Judge Biggs): Yes, answer the question.

A. Well, prior to the coming of the union into the pineapple industry the wages varied on all the islands. On this island the workers in the canneries were receiving 70 cents per hour for male employees and 60 cents for female. The field em-

(Testimony of Jack W. Hall.)

ployees were receiving 15 cents per hour less, but they received the customary perquisites. The same was true of the canneries on Maui, except the Libby cannery, which had a base of 67½ cents an hour for male, and, as I recall, it was 10 cents less for females. On Kauai the rates were substantially less. The Hawaiian Fruit Packers Company, as I recall, paid 50 cents an hour for the male labor, and you must remember, though, that when the union came into the pineapple industry it was actually about a year later than in sugar, and the impact of the organization of sugar had some effect on the wage structure in pineapple. [32]

Q. That is your conclusion?

A. Of course.

Q. Now, as I understand you, the wages for the field workers in the pineapple industry also included perquisites? A. That is correct.

Q. Were those perquisites the same or substantially the same as the perquisites furnished the sugar workers?

A. Oh, substantially the same, I would say.

Q. When did the sugar strike start in the Territory? A. September 1 of 1946.

Q. And how long did it continue?

A. Until the 19th of November on all companies but the Pioneer Mill Company where it went to the 2nd of January, 1947.

Q. On Pioneer Mill it was not over until the 2nd of January? A. That's correct.

(Testimony of Jack W. Hall.)

Q. Do you recall the date when the incident occurred at Paia in which you say large numbers were arrested in mass?

A. As I recall, it was sometime in October. I don't recall the exact date.

Q. The exact date was October 16th, to refresh your memory, when the incident occurred?

A. I could not say positively. I think that is correct.

Q. And do you know or recall whether any picketing continued on Maui from October the 16th until November the 17th?

A. Continuing from the 16th to the 17th?

Q. Or approximately to the end of the strike?

A. Yes, there was some picketing.

Q. When you say "some," to what extent did it continue?

A. Well, I don't think it continued in the same volume that it had prior to that date. I think the people who were over there all the time, throughout the strike, can probably answer that better than I.

Q. When you say the "same volume," what do you mean? What was the volume before the time of the incident?

A. I think you will have to talk to the people on Maui to get the actual numbers. I stayed in Honolulu throughout the strike, except for frequent visits, very hurried ones.

Q. You are a member of the strategy committee of the strike?

(Testimony of Jack W. Hall.)

A. We had not determined in Honolulu how many pickets are to be placed where.

Q. The strategy committee received continuous reports as to what was going on on Maui?

A. That is correct.

Q. Isn't it a fact that on or about the 16th the strikers were turning out in picket lines, containing from three to four to five hundred men?

A. I would not know the figures.

Q. Would you say it would be about that much?

A. I would not know the figures. Those figures were not reported.

Q. They claim they were reported. [34]

A. There may have been occasions where maybe they said "We got 50 pickets out sometime today," but generally that was not reported.

Q. And you can't state how many men were on the line on the day this occurred? A. No.

Q. Do you know from any source?

A. I have seen some pictures.

Q. Isn't it a fact that clearly shows two or three hundred men?

A. There must have been more than 100 men.

Q. You would say the volume amounts to two or three hundred men?

A. I say there was more than one hundred.

Q. You say the union did not continue with that great a number. About what was the volume after the 16th?

A. I understand that it was somewhat less than

(Testimony of Jack W. Hall.)

it had been prior to the arrest for unlawful assembly.

Q. Well, when you say "less," about how many less; could you tell us?

A. I could not estimate that.

Q. You received no reports as to how many were on the line at all?

A. No. As I say, maybe we would get a report that on one particular day so many people were on one plantation, but we [35] kept no record as to how many were out at a time on each of the plantations.

Q. You have no recollection of any report at this time that was received?

A. No, I cannot say that I have any recollection at this time. We have detailed minutes which may show some information that might refresh my mind.

Q. Now did picketing continue on any other places on the island of Maui until the termination of the strike?

A. I think I testified that it did.

Q. Please answer that question.

A. Of course, picketing continued until the 14th of November.

Q. And at what places?

A. I imagine at all plantations.

Q. And what plantations are on Maui other than M. A. Company?

A. Wailuku Sugar Company, the Hawaiian Commercial & Sugar, and Pioneer Mill Company.

(Testimony of Jack W. Hall.)

Q. So that picketing did continue at H. C. & S. Company until about the end of the strike?

A. That is as I recall it.

Q. And picketing continued at the Wailuku Sugar Company until the end of the strike?

A. Correct.

Q. And also continued at Lahaina until the end of the strike there, or approximately at the end of the strike? [36]

A. That's correct.

Q. Isn't it a fact, too, Mr. Hall, that an injunction was issued before the Circuit Court requiring the picketing on the island of Maui—I think it refers to the M. A. Company plantation at Paia?

A. I believe that is so.

Q. Did that injunction have any effect upon the picketing?

A. Not near the effect that the 20-year sentence would have. There is quite a difference——

Q. Please answer the question. Did it have any effect on the picketing?

A. I assume that any action against the strike would have some effect on them.

Q. Do you recall what the terms of the injunction were, with reference to picketing, at the M. A. Company at Paia?

A. No, I do not recall the details.

Q. Well, isn't it a fact that it limited to three men not within more than ten feet of each other, or something to that effect?

(Testimony of Jack W. Hall.)

A. If I recall there, there was a limitation of the total number of pickets and to so many pickets at each point ingress or egress. I think three was the number.

Q. And that injunction continued for sometime, did it not?

A. It certainly did.

Q. And now you mentioned the fact that a vote was taken in [37] the pineapple industry with reference to a strike in that industry; that was in 1947, was it not?

A. That is correct.

Q. And what month was that?

A. The strike was in July. The strike vote was taken about three months before that, when the employers had refused to make any further concessions on their position, and said "This is final," and substantially the position they had taken——

Q. Yes.

A. At the time they took the strike vote, and maintained the position until the strike ended.

Q. So the time of the vote was approximately three months prior to July?

A. As I recall it, yes.

Q. What was the portion of the vote in favor of the strike at that time?

A. As I recall it, it was well over 90%. I would have to look at the figures. I think they are available. I think they were published in the daily papers.

(Testimony of Jack W. Hall.)

Q. And as a result of that vote the people did go on a strike? A. That is correct.

Q. And now with respect to the picketing, was there any picketing during that strike?

A. Yes.

Q. Where did the picketing occur with reference to the county [38] of Maui; with reference to Maui, and what organization on Maui?

A. At Libby, McNeill & Libby, both at their cannery and at their field operations, and at the Maui Pineapple Company, at the cannery operations, and at the Baldwin Packers Company, at both their field and cannery operations.

Q. Now that is in reference to the island of Maui. How about the island of Molokai, which is a part of the County of Maui?

A. They picketed at the California Packing Corporation, and at Libby, McNeill & Libby's operations.

Q. And then on the island of Lanai they picketed over there too?

A. Yes, there was picketing.

Q. And with reference to the island of Lanai how long did the picketing continue?

A. I am not sure whether they picketed the last few days of the strike.

Q. Would your records show any memorandums received as to that, as a member of the strategy committee?

(Testimony of Jack W. Hall.)

A. Yes, I think we would know whether any picketing was going on there at the time of the strike. As I recall, even on this island, there was no picketing on the last day of the strike.

Q. But during the early days of the strike there was [39] picketing on this island? A. Yes.

Q. And practically the same thing is true throughout the Territory wherever the pineapple strike was in effect, there was picketing, isn't that a fact? A. Yes.

Q. And then there have been other labor disturbances since then, have there not; I think particularly here in Honolulu, and the other islands?

A. Well, now, let's see. I presume there have been labor disturbances, but I don't recall offhand that any of our people have been involved in a strike since the pineapple lockout—or, rather, the pineapple strike.

Q. You don't recall of any strikes which have occurred in Honolulu, but isn't it a fact there was a strike in effect against one of the fish packing companies, isn't that so?

A. That was, if I recall, prior to the pineapple strike.

Judge Biggs: Is that within the scope of the cross-examination, Mr. Crockett; properly within it?

Mr. Crockett: I am simply attempting to show, if the Court please, that this witness has testified that by reason of what arose out of this, there was

(Testimony of Jack W. Hall.)

directly an intimidation against their going on strike, because the right of picketing was curtailed.

Judge Biggs: All right. [40]

A. As a matter of fact, now that you have raised the point, my memory is refreshed. Since the end of the pineapple strike there have been no members of our union out on strike.

Q. Well, the strikes that I have mentioned, or the disturbances I have mentioned, was that between the companies and your union or the A. F. of L.?

A. The Tuna Packers, that was a strike of 1947, before the pineapple strike.

Q. What unions were involved in that?

A. Our union. In the spring of 1947. That was also, incidentally, a strike that lost because of the illegal action against us.

Q. There was picketing during that disturbance, was there not? A. Correct.

Q. And how long did that picketing continue?

A. Well, I think the fishermen were out on strike somewhat over two months, and I think the other employees for about ten or 12 days, and some of the other employees.

Q. Now, turning again to the sugar strike, and to Maui; were there any other arrests made on the island of Maui for any incident occurring during the strike? That is, with reference to picketing and things like that?

Mrs. Bouslog: I will object to that, on the

(Testimony of Jack W. Hall.)

ground it is not within the scope of the cross-examination. [41]

Judge Biggs: We will allow this question, and overrule your objection, with the admonition to Mr. Crockett not to pursue this line too far.

A. What do you refer to?

(Last question read by reporter.)

A. I don't know what "picketing and things like that" means. If you say "Were there other arrests during the strike," I will say "Yes, there were." I don't recall, though, what,——As I recall there were arrests for assault and battery. That is a matter of record in the court.

Q. That concerns the persons who were on strike? A. Yes.

Q. Where were those arrests made?

A. At Pioneer Mill Company.

Q. Were there any other arrests made with regard to any of the strike activities at Paia?

A. I don't recall. I think there might have been one or two cases of a minor nature.

Q. Arrests at Paia?

A. I think there may have been. I could not testify to that.

Q. Were there any arrests—Then the only other incidents you recall were at Lahaina?

A. On the island of Maui, yes; that's true.

Judge Biggs: Are you concluding?

Mr. Crockett: I think that is all. That is all, if the [42] Court please.

(Testimony of Jack W. Hall.)

Judge Biggs: Anything in redirect?

Mrs. Bouslog: Just one question, your Honor.

Redirect Examination

By Mrs. Bouslog:

Q. Has there ever been a determination by the Federal government or by any other authority on the value of perquisites?

A. Well, there has been a so-called reasonable value fixed under the Social Security Act, and then I had some experience in that myself——

Judge Biggs: I think the proper way to prove that, if it be pertinent, is by proof of whatever documents it was fixed in.

Witness: I can answer in one word. If you are referring to a value as far as wages *if* concerned, and that's all, there has never been a determination as to the reasonable cost of the perquisites under the Fair Labor Standards Act.

Q. Do you know what date——

It is a fact that they are reported as expenses by the company; that is, the actual cost of perquisites?

A. I cannot say, for the industry as a whole. They have used arbitrary financing.

Mrs. Bouslog: That is all.

Mr. Crockett: That is all we have.

(Witness excused.) [43]

Mrs. Bouslog: Your Honors, you will notice in our stipulation that the defendant did not want to

stipulate to the individual and representative capacities in which these various suits were brought by the union officers.

Judge Biggs: You are now going to endeavor to prove that, is that correct?

Mrs. Bouslog: Yes, that is correct.

Judge Biggs: All right. Swear the witness, please.

ANTONIO T. RANIA

called as a witness by the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. What is your name, please?

A. Antonio T. Rania.

Q. (By Judge Biggs): How do you spell the last name?

A. (Spelling) "R-a-n-i-a."

Q. Are you a member of the International Longshoremen's & Warehousemen's Union?

A. Yes.

Q. How long have you been a member?

A. Since 1944, when I was about to volunteer into the army.

Q. How long have you lived in the islands, Mr. Rania? A. Off and on since 1916.

Q. Are you the Antonio T. Rania who is shown in this [44] complaint that was filed in this court,

(Testimony of Antonio T. Rania.)

asking this court to declare the unlawful assembly and riot statute unconstitutional? A. Yes.

Judge Biggs: What number was that?

Mrs. Bouslog: 836, your Honor.

Q. What office do you hold with the International Longshoremen's & Warehousemen's Union?

A. At the present time I am the president of the United Sugar Workers' Local 142.

Q. And what does Local 142 comprise, Mr. Rania?

A. It comprises all the different islands where the sugar industry is produced, namely Hawaii, Maui, Oahu and Kauai.

Q And did you bring this suit for yourself as a member and on behalf of—or as an officer for the members, and in your representative capacity?

A. As an elected officer of a local, I bring this in behalf of the membership, and on behalf of myself as an American citizen.

Q. And why did you bring the action in this case?

A. I think it is directed against labor, in which we belong, because it puts fear into our workers, which is contrary to one of the Four Freedoms, and it also takes away our membership, supposing we were on strike and all of a sudden——(interrupted)

Q. (By Judge Biggs): Takes away what?

A. Our membership, and they are arrested, and mass arrests. Now I understand you have more than 70 arrested in the last strike—that is terrific—

(Testimony of Antonio T. Rania.)

Mr. Crockett: If the Court please, I ask that the statement of the witness be stricken as a mere conclusion, and argumentative.

Judge Biggs: Does that conclude your examination?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: The motion to strike is denied, with the right to renew it if it appears to be not relevant later. Cross-examine.

Mr. Crockett: No cross-examination.

(Witness excused.)

Mrs. Bouslog: At this time I would properly present Jack Kawano, who is a union officer in Case 828, but Mr. Kawano is on another island today, and was not able to get back, but I will have him here when he returns. His testimony will be very brief, and I will take him out of order at a later time.

Judge Biggs: Very well.

Mrs. Bouslog: At the present time I would like permission of the Court to take another witness somewhat out of order, because he has an engagement elsewhere. He is a student and needs to return to his classes. [46]

Judge Biggs: Very well.

SHIGETO MINAMI

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please.

A. My name is Shigeto Minami.

Q. Where do you live now?

A. At Judo Mission Dormitory, 1429 Makiki street

Q. Is that a dormitory of the University of Hawaii? A. No.

Q. You are attending the University of Hawaii?

A. Yes.

Mrs Bouslog: Your .Honor, this deals with the complaint in Civil No. 828.

Judge Biggs: Yes.

Q. Where were you living on—or in July, 1947?

A. I was living at my home in Lanai City.

Q. Prior to July 10th 1947 were you employed?

A. Yes.

Q For whom were you working?

A. I was working for the Research Department of the Hawaiian Pineapple Company.

Q. And were you a member of the union? [47]

A. No.

Q. When the union members went on strike on July 10th 1947 did you go on strike too?

A. Yes, I did not go to work.

Q. You did not go to work? A. No.

Q. On the date of July 14, 1947——(Your

(Testimony of Shigeto Minami.)

Honor, that is the date of the harbor incident as it appears from the complaint, and it has been stipulated on the date of July 14, 1947)——were you at any time down at the harbor on Lanai City?

A. Yes.

Q. I mean, down at the harbor away from Lanai City? A. Yes.

Judge Biggs: The Court is not familiar with the geography. You mean the harbor appurtenent to Lanai City?

Mrs. Bouslog: No, your Honor, for the Court's benefit——I will let the witness do it——

Q. Where is Lanai City in relation to the harbor?

A. Well, the harbor is on the seacoast——that is obvious——and the City is about seven miles inland from the harbor.

Q. Seven miles inland? A. Yes.

Q. The City is located on the plateau where the Pineapple is grown, is that correct? A. Yes.

Q. And to get to the harbor you have to take the road and drive seven miles, in order to get down to the harbor? [48] A. Yes

Q. What is the proper name of the harbor?

A. Well, we call it——it is called Kaumalapau.

Q. (By Judge Biggs): Will you spell it for the reporter.

A. I believe it is spelled "K-a-u-m-a-u-p-a-l-u-p-a-u."

Judge Biggs: Let's call it the "harbor."

(Testimony of Shigeto Minami.)

Q. Well, on the morning of——on the day of July 14th, were you down at the harbor at any time? A. Yes, I was.

Q. What time did you go down there?

A. I went down about 10 o'clock, I believe.

Q. And for what purpose did you go down there?

A Oh, we went down there intending to swim.

Q. How long did you remain down at the harbor?

A. We stayed down there until about one o'clock.

Q. And were there any police officers down there while you were down there?

A. Yes, I recall some officers in uniform.

Q. That was before 1:30?

A. Yes. While I was down there.

Q. Did you see any police officers taking pictures down there at that time?

A. Well, I believe there were some men taking pictures.

Q. And after you left the harbor at 1:30 did you go back down to the harbor at any time again that day? [49] A. No, I did not.

Q And you left at 1:30, is that correct?

A. About one.

Q. Were you down at the harbor at the time the alleged incident occurred? A. No.

Q. Were you arrested in connection with that incident? A. Yes, I was.

Q. When were you arrested?

(Testimony of Shigeto Minami.)

A. I don't know the exact date, but about two weeks after, at the same time when the rest of the members of the union were arrested.

Mrs. Bouslog: The record shows, your Honor, in the transcript filed by the Attorney General, of the Magistrate's Court, that the arrest was made on August the 1st, 1947. The record also, if I am to make this witness' testimony as short as possible——the record also shows that this defendant was charged with unlawful assembly and riot and that he put up bail, and that is in the record, and it was stipulated to by Mrs. Lewis. And that he was not released until August the 6th——or, from August the 6th until, I believe, it was sometime in September——No, on August the 28th he was discharged, or the prosecution moved to strike his name, but he was under indictment and charged with unlawful assembly and riot between those times, and that all appears in the record, too. We have [50] stipulated to that

Mr. Crockett: May I amend that by saying there was no indictment; just a complaint.

Mrs. Bouslog: I am sorry.

Mr. Crockett: A police complaint.

Judge Biggs: A police complaint.

Mrs. Bouslog: But he was under bail there that day, and charged with unlawful assembly.

Judge Biggs: Yes, and all this appears in the record, as being stipulated?

Mrs. Bouslog: Yes, with the exception of the

(Testimony of Shigeto Minami.)

reason for——why he was not down there at the time. Judge Biggs: Yes.

Q. Do you know how long the preliminary hearing which you attended took; how many times did you have to appear in the court?

A. Oh, I would say about on——about five different occasions.

Q. And on one occasion how many days did the hearing go on?

A Well, I believe at one time we held the hearing there for about three days straight.

Q. And during the course of that hearing which you attended was there any evidence whatsoever that you had been down at the harbor at the time of the incident? A. No. [51]

Cross-Examination

By Mr. Crockett:

Q. What bail did you have to put up?

A. $100.

Q. And you say you appeared in court on five different occasions, on one of which you were there for three continuous days?

A. I am not definite, but I believe it was about five times I appeared in court.

Q. Isn't it a fact that the five times you appeared in court include the three days consecutively that you appeared there? A. Yes.

Mr. Crockett: That is all. No further cross-examination

(Witness excused.)

MAC MASATO YAMAUCHI

called as a witness on behalf of plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your full name to the Clerk, please. A. Mac Masato Yamauchi.

Q. Where do you live? A. Lahaina. [52]

Q. What island? A. Lahaina, Maui.

Q. By whom are you employed?

A. Pioneer Mill Company.

Q. Are you a member of the union?

A Yes.

Q. When did you join the union?

A. In the latter part of 1943.

Q. Were you a member of the union at the time of the Territory-wide sugar strike, September 1st?

A. Yes.

Q. Did Pioneer Mill go on strike at that time?

A. Yes.

Q. What office did you hold with the union during the time of that strike?

A. I was the chairman of the strike strategy committee.

Q. And were you arrested during the course of the strike? A. Yes.

Q. Do you recall the date of your arrest?

A. I believe it was November 13th

Q. I show you a copy of a complaint which says: "District Court of Wailuku, County of Maui, com-

(Testimony of Mac Masato Yamauchi.)

plaint against you, Mas Masato Yamauchi, and a number of other persons, who are charged with felonious and unlawful assembly. Will you look at that complaint and see if that is the complaint on which [53] you were charged.

Judge Biggs: Is it stipulated?

Mrs. Bouslag: Mr. Crockett said he would not object as to the form.

Mr. Crockett: No; we are willing to stipulate that that is a copy of the complaint. As I informed counsel, we will object to it because it is not material to the issues in this particular case.

Judge Biggs: The Court will overrule your objection, subject to a motion to strike as to the materiality, and I would suggest that they be identified simply by reciting what they are to the Court, and then that they be marked as one exhibit.

Mrs. Bouslog: I will ask the Court's permission to substitute copies at a later date, because these have a number of pencil notations on them, and I was not able to get another copy.

Judge Biggs: Very well.

Mrs. Bouslog: For the information of the Court, one complaint charges Mac Masato Yamauchi and ten other persons, together with other persons unknown, in the words of the statute, your Honor——

Judge Biggs: Very well. What case is the witness, Mr. Yamauchi in?

Mrs. Bouslog: Mr. Yamauchi is not a complaint

(Testimony of Mac Masato Yamauchi.)

in [54] this action. The purpose of his testimony, your Honor, is to show that the cases before the Court are not the only instances in which this statute has been invoked against members of the union.

Judge Biggs: Very well.

Mrs. Bouslog: Then the second complaint includes Mac Masato Yamauchi——

Judge Biggs: This witness?

Mrs. Bouslog: This witness, and 11 others—there are 21 in these—21 individuals, altogether, who were charged with unlawful assembly during the Lahaina strike—at the Pioneer Mill during the sugar strike.

Judge Biggs: Very well. Let that be marked, first. Mark them as one exhibit. Number 5.

(Documents offered are received and marked: "Plaintiffs' Exhibit No. 5.")

PLAINTIFF'S EXHIBIT No. 5

District Court of Wailuku, County of Maui, Territory of Hawaii

COMPLAINT

F. B. Demello first being duly sworn says:

That Mac Masato Yamauchi, Masaru Mizomi, Silverio Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sulliban, Takeo Taira, Masao Kaita, and William Seabury at Lahaina, in the District of Lahaina, County of Maui, Territory

(Testimony of Mac Masato Yamauchi.)

of Hawaii, on to-wit the 6th day of November, 1946, together with divers others persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, assaulting, shoving, pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into one, Harlow Wright, contrary to the form of the statutes in such cases made and provided.

/s/ FRANCIS B. DEMELLO

Subscribed and sworn to before me this 13th day of November, A. D. 1946.

/s/ ANDREW H. WONG,
District Magistrate of Wailuku, County of Maui.

Admitted.

District Court of Wailuku, County of Maui,
Territory of Hawaii

COMPLAINT

F. B. Demello first being duly sworn says:

That Mac Masato Yamauchi, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi

(Testimony of Mac Masato Yamauchi.)

Mishima, Hisashi Taguchi, Seichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian at Lahaina, in the District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November, 1946, together with divers other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, assaulting, shoving, pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into others, to-wit, James Backlund and Michael Hopland Nelson, contrary to the form of the statutes in such cases made and provided.

/s/ FRANCIS B. DEMELLO.

Subscribed and sworn to before me this 13th day of November, A. D. 1946.

/s/ ANDREW H. WONG,
District Magistrate of Wailuku, County of Maui.

Admitted.

Q. After you were arrested, on this complaint, were you required to put up bail? A. Yes.

(Testimony of Mac Masato Yamauchi.)

Q How much bail did you put up?

A. About $550. $200 for unlawful assembly, and on two counts.

Q. We are talking now about the bail you put up at the very first instance. Do you recall how much money was posted by the union for your appearance in court? [55]

A. A thousand dollars.

Q. On each count? A. On each count.

Q. Now what time did the Territorial-wide sugar strike end? A. On November 19th.

Q. What time did the strike end at Pioneer Mill?

A. We went back to work on November 19th, but the strike ended January the 2d.

Q. Why did the employees of Lahaina go back on strike again after the rest of the employees were at work?

A Because the management have discharged 10 of our members.

Q. Were those ten persons discharged among those charged by the complaints which have been introduced here? A. Yes.

Q. And they were discharged before there was a trial of the issues involved in the complaint?

A. Yes.

Q. What was the reason given for their discharge?

A. Violating the house rules.

Q. The house rules of the Pioneer Mill Company? A. Yes.

(Testimony of Mac Masato Yamauchi.)

Q. Do those house rules provide that a person may be discharged for any offenses committed in the company town? A. Yes.

Judge Biggs: Well this Court, at least speaking for [56] myself, is totally unfamiliar as to what house rules are. Do you have copies of the house rules?

Mrs Bouslog: There will be later witnesses in the Paia and Lanai incidents. I do have copies of the house rules. I don't have them from this witness.

Q. Now after criminal complaint was lodged against you by the police, about your part in an assault and battery involving James B. Dagland, Michael H. Nelson and one Harlow Wright——

A. Yes.

Q. Did you tell the police that you had anything to do with those—— A. No.

Q. Were you——

Judge Biggs: I don't think the answer is clear. Does the witness mean that he told the police that he had nothing to do with these matters?

Q. Did you tell the police you had nothing to do with these matters?

A. Well, I was not present at the occasion

Judge Biggs: Either your question is pertinent or it isn't. I have a little doubt as to its relevancy, anyhow.

Mrs. Bouslog: I am trying to establish, your Honor, that the police knew that Mr. Yamauchi

(Testimony of Mac Masato Yamauchi.)

was not present at either one of those occasions, But I will prove it in another manner. [57]

Q. Were you subsequently indicated by the grand jury of Maui County for unlawful assembly and riot? A. Yes.

Q. And a former assault and battery?

A. Yes.

Q. Is this a copy of the indictment against you?

A. Yes.

Q. There were two indictments brought in against you, is that correct? A. Yes

Q. And here is the other one? (Indicating)

A. Yes.

Q. And these indictments include also the 21 people who were arrested at the same time you were? A. Yes.

Q. Now, subsequently to——

Judge Biggs: If you are going to offer these papers, offer them now.

Mrs. Bouslog: Yes, I will offer the indictment of the 2nd Circuit Court, relative to this witness and the other witnesses.

Judge Biggs: It is admitted subject to the prior objection, and the same ruling, and note them please as Exhibit 6—Plaintiffs' Exhibit 6.

(Documents offered received and marked: "Plaintiffs' Exhibit 6.") [58]

(Testimony of Mac Masato Yamauchi.)

PLAINTIFF'S EXHIBIT No. 6

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii
January A. D. 1946 Term

TERRITORY OF HAWAII

vs.

MAC MASATO YAMAUCHI, ICHIRO HIRATA, ISAMI OGAWA, K. OBA, TAMIO SHIOTSUGU, HIROMI MISHIMA, HISASHI TAGUCHI, SHEICHI FUJIWARA, SIXTO AQUINO, CIRILO SACOCO, FERNANDO CALMA and CARLOS MILIAN,
Defendants.

INDICTMENT

First Count, Riot

The Grand Jury of the Second Circuit of the Territory of Hawaii do present that Iichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguchi, Seichi Fujiwara, Sixto Aquina, Cirilo Sacoco, Fernando Calma and Carlos Milian, at Olowalu, in the District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November 1946, together with diverse other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike

(Testimony of Mac Masato Yamauchi.)

terror in others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, assaulting, beating, shoving, pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into others, to-wit, James B. Backlund and Michael Hopland Nelson; and

The Grand Jury do further present that Mac Masato Yamauchi not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hishashi Taguchi, Seichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian to commit the offense hereinabove set forth and thereby was an accessory before the fact of the commission of such offense.

Contrary to the form of the statute in such cases made and provided.

Second Count, Conspiracy, Third Degree

And the Grand Jury do further present that, Mac Masato Yamauchi, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguch, Sheich Fujiwara, Sixto Aquino, Cirilo Saco, Fernando Calma and Carlos Milian, at Lahaina and Olowalu, in the District of Lahaina, County of Maui, Territory of Hawaii, on to-wit, the 6th day of November 1946, together with divers

(Testimony of Mac Masato Yamauchi.)

other persons whose names are unknown, did unlawfully, maliciously and fraudulently combine and mutually undertake and concert together to commit an offense, to-wit, to unlawfully, maliciously and forcibly inflict corporal injuries to and upon others, to-wit, James B. Backlund and Michael Hopland Nelson,

Contrary to the form of the statute in such cases made and provided.

Third Count, Assault and Battery

And the Grand Jury do further present that, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguchi, Sheichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian at Olowalu, District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November 1946 did unlawfully, maliciously and forcibly inflict a corporal injury to and upon another to-wit, one James B. Backlund, without authority or justification by law;

And do further present that Mac Masato Yamauchi, not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguchi, Sheichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian to commit the offense hereinabove set forth and thereby was an accessory before the fact to the commission of such offense.

(Testimony of Mac Masato Yamauchi.)

Contrary to the form of the statute in such cases made and provided.

Fourth Count, Assault and Battery

And the Grand Jury do further present that, Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguch, Sheichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian at Olowalu, District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November 1946, did unlawfully, maliciously and forcibly inflict a corporal injury to and upon another, to-wit, one Michael Hopland Nelson, without authority or justification by law:

And do further present that Mac Masato Yamauchi, not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said Ichiro Hirata, Isami Ogawa, K. Oba, Tamio Shiotsugu, Hiromi Mishima, Hisashi Taguchi, Sheichi Fujiwara, Sixto Aquino, Cirilo Sacoco, Fernando Calma and Carlos Milian to commit the offense herein above set forth and thereby was an accessory before the fact to the commission of such offense,

Contrary to the form of the statute in such cases made and provided.

(Testimony of Mac Masato Yamauchi.)

A true Bill found this 12th day of December 1946.

D. DEASE,
Foreman of the Grand Jury.

WENDELL F. CROCKETT,
Prosecuting Officer,
County of Maui.

Admitted.

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

January A. D. 1946 Term

TERRITORY OF HAWAII

vs.

MAC MASATO YABAUCHI, MASARU MIZOMI, SILVEIRO BUCANEG, ROQUE OMISOL, KOSEI TOYAMA, MASANOBU KAWAHARA, JOSE SULLIBAN, TAKEO TAIRA, MASAO KAITA, WILLIAM SEABURY,

Defendants.

INDICTMENT

First Count, Riot

The Grand Jury of the Second Circuit of the Territory of Hawaii do present that Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sulliban, Takeo Taira, Masao Kaita and William Seabury, at Olowalu, in the District of Lahaina, County of Maui, Territory

(Testimony of Mac Masato Yamauchi.)

of Hawaii, on to-wit the 6th day of November 1946, together with diverse other persons whose names are unknown, then and there being of their own authority assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike terror in others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to-wit, assaulting, beating shoving pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into others, to-wit, Harlow Wright, and

The Grand Jury do further present that Mac Masato Yamauchi not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sulliban, Takeo Taira, Masao Kaita and William Seabury to commit the offense hereinabove set forth and thereby was an accessory before the fact of the commission of such offense.

Contrary to the form of the statute in such cases made and provided.

Second Count, Conspiracy, Third Degree

And the Grand Jury do further present that, Mac Masato Yamauchi, Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sulliban, Takeo Taira, Masao

(Testimony of Mac Masato Yamauchi.)

Kaita and William Seabury at Lahaina and Olowalu, in the District of Lahaina, County of Maui, Territory of Hawaii, on to-wit, the 6th day of November 1946, together with divers other persons whose names are unknown, did unlawfully, maliciously and fraudulently combine and mutually undertake and concert together to commit an offense, to-wit, to unlawfully, maliciously and forcibly inflict corporal injuries to and upon others, to-wit, Harlow Wright,

Contrary to the form of the statute in such cases made and provided.

Third Count, Assault and Battery

And the Grand Jury do further present that, Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sulliban, Takeo Taira, Masao Kaita and William Seabury at Olowalu, District of Lahaina, County of Maui, Territory of Hawaii, on to-wit the 6th day of November 1946 did unlawully, maliciously and forcibly inflict a corporal injury to and upon another to-wit, one Harlow Wright, without authority or justification by law.

And do further present that Mac Masato Yamauchi, not being present at the commission of such offense did unlawfully and feloniously procure, counsel, and incite the said Masaru Mizomi, Silveiro Bucaneg, Roque Omisol, Kosei Toyama, Masanobu Kawahara, Jose Sulliban, Takeo Taira, Masao Kaita and William Seabury to commit the offense herein-

(Testimony of Mac Masato Yamauchi.)

above set forth and thereby was an accessory before the fact to the commission of such offense.

Contrary to the form of the statute in sch cases muade and provided.

A True Bill found this 12th day of December 1946.

/s/ D. DEASE,
Foreman of the Grand Jury.

WENDELL F. CROCKETT,
Prosecuting Officer,
County of Maui.

[Admitted]: Filed Dec. 12, 1946.

Q. Did you ever have a jury-trial or go to trial on this indictment? A. No.

Q. What happened to the charge of unlawful assembly and of the conspiracy alleged against you? A They were dropped.

Q. What happened to the assault and battery charge against you?

A. We pleaded nolle contendere.

Q. And what sentence did you receive for assault and battery in response to your plea of nolle contendere?

A. A $200 fine, and one year in prison, suspended for one year, and on the second count a $200 fine, and one year jail sentence, suspended one year——

(Testimony of Mac Masato Yamauchi.)

Q. Is this the sentence and judgment of the Court in respect to these two cases? (Showing document to the witness)

A. Yes.

Judge Biggs: Mrs. Bouslog, I don't want to interferewith your presentation, but this witness is a layman after all, and if he received a sentence——

Mrs. Bouslog: I was just showing him his own name.

Judge Biggs: Well, it is stipulated, as I understand, that these are the sentences. The objection is as to their relevancy.

Q. Did the prosecution and the Court know at the time the [59] sentence was imposed upon you for assault and battery that you were not present at the time any assault and battery occurred?

A. Yes——

Mr Crockett: To which we object, if the Court please. She is asking the witness what the witness what the prosecution and the Court knew.

Judge Biggs: I don't see how the witness can testify as to what was in the prosecution and the Court's mind. Sustain the objection.

Mrs. Bouslog: All right, your Honor, the sentences which I will offer——the papers show he was not present at either the unlawful assembly or through the riot.

Mr. Crockett: That is a subject for argument.

Judge Biggs: You offer these now?

Mrs. Bouslog: Yes. The indictment shows on its fact that Mr. Yamauchi was not charged with being

(Testimony of Mac Masato Yamauchi.)

present at the time when any assault and batteries were committed.

Judge Biggs: He has already stated that he was not present. That is his testimony.

Mrs. Bouslog: That's right.

Judge Biggs: Let them be marked please. Exhibit number 7

(Documents offered in evidence are received and marked: "Plaintiffs' Exhibit No. 7.") [60]

Plaintiff's Exhibit No. 7

In the Circuit Court of the Second Judicial Circuit, Territory of Hawaii

Cr. No. 2380

January Term, A. D. 1946

TERRITORY OF HAWAII

vs.

MAC MASATO YABAUCHI, MASARU MIZOMI, SILVEIRO BUCANEG, ROQUE OMISOL, KOSEI TOYAMA, MASANOBU KAWAHARA, JOSE SULLIBAN, TAKEO TAIRA, MASAO KAITA, WILLIAM SEABURY,

Defendants.

JUDGMENT AND SENTENCE OF COURT

The Grand Jury of the Circuit Court of the Second Judicial Circuit of the Territory of Hawaii on the

(Testimony of Mac Masato Yamauchi.)

12th day of December, 1946, having returned an indictment against Mac Masato Yamauchi, one of the defendants above named, charging the said defendant in said indictment with Riot, in the First Count, Conspiracy in the Third Degree, in the Second Count, and Assault and Battery, in the Third County thereof;

And the said Defendant having been arraigned in the said Court upon such indictment in the manner and form as by law required on the 28th day of December 1946 plead nolo contendere to and by the Court was thereupon found guilty of the charge of Assault and Battery as alleged in the Third Count of said indictment.

And the Defendant, on the 28th day of December, 1946, having appeared in this Court and cause for Judgment and Sentence, and no lawful reason being given to the Court why such Judgment and Sentence should not be imposed;

It is the Judgment and Sentence of This Court, upon the Third Count of said indictment that the said Mac Masato Yamauchi, be confined in the County Jail in the County of Maui for a period of one year and to pay a fine of $150.00, costs remitted, such sentence of imprisonment to run consecutively to and to commence upon the expiration or termination of the sentences imposed by this Court upon this defendant in the case entitled "Territory of Hawaii vs. Mac Masato Yamauchi, et al.," being Criminal No. 2379 of said Court.

(Testimony of Mac Masato Yamauchi.)

However, it appearing to the satisfaction of this Court, that the ends of justice, and the best interest of the public as well as of the defendant, will be subserved by so doing,

It is Ordered, that upon payment of the fine herein imposed the execution of the above sentences of imprisonment shall be suspended for a period of Two Years from the date of this Order, subject to the terms and conditions contained in the Minute Order of this Court re Adult Probation dated and filed the 11th day of April 1946, which Order by reference is made a part hereof.

Dated, Wailuku, Maui, T. H. this 8th day of January 1947.

By the Court.
[Seal] /s/ D. W. TALLANT,
Deputy Clerk.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated at Wailuku, Maui, T. H., Jan. 8th, A. D. 1947.

/s/ LYONS K. NAONE, JR.,
Assistant Clerk, Circuit Court,
Second Circuit,
Territory of Hawaii.

Admitted.

[Endorsed]: Filed Jan. 8th, 1947.

(Testimony of Mac Masato Yamauchi.)

In the Circuit Court of the Second Judicial Circuit,
Territory of Hawaii

C. No. 2379

January A. D. 1946 Term

TERRITORY OF HAWAII

vs.

MAC MASATO YAMAUCHI, ICHIRO HIRATA, ISAMI OGAWA, K. OBA, TAMIO SHIOTSUGU, HIROMI MISHIMA, HISASHI TAGUCHI, SEICHI FUJIWARA, SIXTO AQUINO, CIRILO SACOCO, FERNANDO CALMA and CARLOS MILIAN,

Defendants.

JUDGMENT AND SENTENCE OF COURT

The Grand Jury of the Circuit Court, Second Judicial Circuit Court, Territory of Hawaii, on the 12th day of December, 1946, having returned an indictment against Mac Masato Yamauchi, one of the defendants above named, charging the said defendant in said indictment with riot, in the first count, conspiracy in the third degree, in the second count, and assault and battery, in the third and fourth counts thereof,

And the said defendant having been arraigned in the said Court upon such indictment in the manner and form as by law required, on the 28th day of December, 1946, plead nolo contendere to, and by

(Testimony of Mac Masato Yamauchi.)

the Court was thereupon found guilty of the charges of assault and battery as alleged in the third and fourth counts of said indictment.

And the defendant, on the 28th day of December, 1946, having appeared in this Court and cause for Judgment and Sentence, and no lawful reasons being given to the Court why such Judgment and Sentence should not be imposed.

It is the Judgment and Sentence of this Court that upon the third count of said indictment, the defendant Mac Masato Yamauchi be confined in the County Jail of the County of Maui for a period of one year and to pay a fine of $200, costs remitted.

It is Further the Judgment and Sentence of this Court that upon the fourth count of such indictment, the defendant, Mac Masato Yamauchi, be confined in the County Jail of the County of Maui for a period of one year and to pay a fine of $200, costs remitted, such sentence of imprisonment to run consecutively to, and to commence upon the expiration or termination of the sentence herein imposed upon the said defendant under the third count of said indictment.

However, it appearing to the satisfaction of the Court, that the ends of justice, and the best interest of the public as well as of the defendant, will be subserved by so doing,

It is ordered that upon payment of the fine herein imposed, the execution of the above sentences of imprisonment shall be suspended for a period of

(Testimony of Mac Masato Yamauchi.)

two years from the date of this Order, subject to the terms and conditions contained in the Minute Order of this Court re Adult Probation dated and filed the 11th day of April 1946, which Order by reference is made a part hereof.

Dated at Wailuku, Maui, T. H. this 8th day of January, 1947.

By the Court.

[Seal] /s/ D. W. TALLANT,
Deputy Clerk.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Jan. 8th, A. D.

/s/ D. W. TALLANT,
Deputy Clerk, Circuit Court,
Second Circuit,
Territory of Hawaii.

Admitted.

[Endorsed]: Filed Jan. 8th, 1947.

Mrs. Bouslog: I have no further questions, Mr. Crockett.

Cross-Examination

By Mr. Crockett:

Q. Do I understand you to say, Mr. Yamauchi,

(Testimony of Mac Masato Yamauchi.)

that the house rules provide that employees of the company can be dismissed for committing any offense within the town of Lahaina?

A. Yes.

Q. Could you give us the wording of that rule?

A. Well, we merely went on a strike, and did not want to violate any house rules.

Q. My question, again, is to give us the wording of those rules; the exact wording of the rules which provides you can be discharged for any offense committed within the town?

A. It says in the house rules if you violate any house rules you will be discharged from the company.

Q Well, you still haven't answered my question, as to what the house rules say with reference to committing offenses?

A. I don't quite understand you.

Q. Well, it is a rule, for example, if an employee were arrested for speeding, for example, in the town of Lahaina, that he would be subject to dismissal by the company?

A. That all depends on the discreption of the person, and the judgment of the management.

Judge Biggs: Have you got a copy of that house rule? A. I haven't got it here. [61]

Mr. Crockett: At this time, if the Court please, we ask that counsel produce a copy of the house rule for the Courts' inspection.

Judge Biggs: Mrs. Bouslog stated in reply to

(Testimony of Mac Masato Yamauchi.)

the Court's question, directed precisely as your's is, Mr. Crockett, that she would produce or have a witness produce the house rules at a later time. Is that your offer?

Mrs. Bouslog: Yes.

Q. Well, isn't it a fact that those house rules provide for only offenses committed on plantation property, or which may have to do with relations between the employees, or, you might say, the workers, and their superiors, isn't that right?

A. Yes.

Q That is all it has to effect, isn't that right?

A. Yes.

Q. And it only applies to such offenses as might occur under those circumstances?

A. Yes.

Q. Who were these persons named in this indictment that this assault and battery are alleged to have been committed upon? That is to say, who was this James B. Backman. Who was he?

A. He was a supervisor in the mill.

Q. And when did this assault and battery take place? A. Out in Olowalu. [62]

Q. Was that on plantation property?

A. Yes

Q. Was he engaged in plantation work at that time? A. He was irrigating.

Q. Irrigating plantation cane? A. Yes.

Q. How about Michael Nelson, was he also one of the supervisors on the plantation? A. Yes.

(Testimony of Mac Masato Yamauchi.)

Q. Whereabouts did the assault take place?

A. At the same place.

Q. In the plantation field? A. Yes.

Q. Was he also irrigating the cane?

A That's right.

Q. And then the third person named in the other indictment, Harlow Wright, where did that assault take place?

A. About half a mile away from the previous scene.

Q. Was that also on plantation property?

A. Yes.

Q. What was he doing at the time when the assault was committed on him?

A. He was irrigating also.

Q. He was also an employee of the plantation?

A. Yes. [63]

Q. What was his normal employment?

A. I believe at that time he was the personnel director.

Q. Now you state that you were not present when these assaults were committed? A. No

Q. Your official position was what?

A. Strike strategy committee foreman.

Q. And isn't it a fact, Mr. Yamauchi, that those persons who are charged with and who actually committed the assault were sent out in the field with the express direction from you to stop these men from doing plantation work in which they were engaged?

(Testimony of Mac Masato Yamauchi.)

A. Well, I ordered them to try to persuade them not to irrigate.

Q. You sent them out? A. Yes.

Q. And they were persuading them not to irrigate? A. Tro, not to irrigate.

Q. And that is the reason you were charged with being connected with this particular case?

A. Yes.

Q And you entered a plea of guilty?

A. Nolle contendere.

Q. Were you represented by counsel when that plea was entered? A. Yes. [64]

Q. Who was your counsel?

A. Mrs. Harriett Bouslog.

Redirect Examination

Judge Biggs: Any more questions, Mrs. Bouslog, of this witness?

Mrs. Bouslog: Nothing more.

(Witness excused.)

Judge Biggs: Let's see if we can get in one more witness by the next recess.

NICHOLAS C. SIBOLBORO

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs Bouslog:

Q. Will you state your name for the Court, please.

(Testimony of Nicholas C. Sibolboro.)

A. Nicholas C. Sibolboro.

Q. Where do you live, Sibolboro?

A. I live at Wahiawa.

Q. By what company are you employed?

A. At the present time I am employed at the ILWU.

Q. What one of the pineapple companies?

A. Libby, McNeill & Libby.

Q. Were you a member of the union at the time of the pineapple lockout in July, 1947?

A. Yes. [65]

Q What was your official capacity during that strike? A. I was a picker.

Q. Were you arrested during the pineapple strike? A. Yes, Madam.

Q. Where were you arrested?

Mr. Crockett: To which we object, if the Court please, as having no bearing whatever on the issues of this case.

Judge Biggs: Will you explain why, Mr. Crockett?

Mr. Cockett: Why it has no bearing; in the first place it occurred on the island at Wahiawa; it was on this island, of Oahu. The incidents which are before the Court are instances which occurred on the island of Maui, principally, and the island of Lanai, which is in the County of Maui, and as prosecuting officer I only have jurisdiction on those islands. I have nothing whatever to do with conditions here on Oahu, and in view of the circum-

(Testimony of Nicholas C. Sibolboro.)

stances we submit that they might go out and bring in a thousand persons who might present to the Court some force used or something that happened on the island of Oahu, which was not pertinent to something that took place on the island of Maui.

Judge Biggs: What have you to say in respect to that?

Mrs. Bouslog: I am offering this on the fact that the union charges the Attorney General is the defendant in this action, which includes all the counties of the Territory.

(Argument by counsel.) [66]

Judge Biggs: The Court entertains some doubt in this matter, and if we had a jury present we would have to make a ruling on it. I am inclined, however, to receive it subjection to the objection, and subject to a motion to strike

Mr. Crockett: May I add a further objection to this, that counsel has stated that the existence of this statute constitutes a previous restraint.

Mrs. Bouslog: That is our contention.

Mr. Crockett: As to previous restraint, I feel that that is a matter of law, and certainly not subject to the views of any particular individuals. In rebuttal to this man's testimony we might go out and get hundreds of people who feel that is not previous restraint.

Judge Biggs: Yes, but unless this witness brings his answers to the question——as to the particular effect upon him, the matter will be inadmissible.

(Testimony of Nicholas C. Sibolboro.)

Miss Lewis: May I ask whether, Mrs. Bouslog, the Attorney General directed that these charges be placed?

Judge Biggs: Miss Lewis has directed a question to you. Do you propose to answer the question, or not?

Mrs. Bouslog: Will you repeat the question, Miss Lewis?

Miss Lewis: I asked whether you proposed to show that the Attorney General had personally directed that this [67] charge be placed?

Mrs. Bouslog: I don't think, your Honor, that where the charge, acting under the color of law——

Judge Biggs: Will you answer the question, if you want to. We are not compelling you to answer it.

Mrs. Bouslog: Our answer to the question, and in fact the whole theory of our proof, is that the Attorney General is personally responsible and has directed the full force of these laws against the working people in the Territory, in an unfair and discriminatory manner.

Miss Lewis: That is your theory, but you are not offering to prove that the Attorney General had anything to do with the placing of this charge, is that correct?

Mrs. Bouslog: Through his officers and agencies, who are also police officers in the Territory, he is responsible

Judge Biggs: Let's not have argument here on

(Testimony of Nicholas C. Sibolboro.)

something that has to be argued later. Suppose you proceed with the questions, and not with an unfruitful exchange.

Q. On what date were you arrested, Mr. Sibolboro? A. I was arrested July the 13th.

Q. Were there any other people arrested with you?

A. Yes, sir, Madam, there were seven with me, and eight, together with me, rather.

Q. What day of the week was the 13th, if you know? [68]

A. That was Sunday, I believe.

Q. And what time of the day was it when you were arrested?

A. I am not exactly sure about the exact date, but it was sometime between 9 and 10 in the morning.

Q. After you were arrested what did the police officer say he was charging you with at the time he arrested you? A. Nothing

Q. He arrested you without saying anything. What did they do after that time?

A. Put us in the police station at Wahiawa.

Q. When you were at the police station in Wahiawa were there any other union persons being held there? A. No, Madam.

Q. Were there any other union persons arrested and brought into the Wahiawa station after that?

A. About two hours later.

Q. How many? A. There were 85, I think.

(Testimony of Nicholas C. Sibolboro.)

Q. Altogether how many union members were being held in the Wahiawa Police Station?

A. 93.

Q And what happened after that time?

A. Well, they just let us stay in the police station, and when it was about four o'clock in the afternoon they sent us over to the Honolulu Police Station. [69]

Q. And after you arrived at the Honolulu police station how long did you remain there?

A. I have been there until about 11 o'clock in the evening.

Q. About 11 o'clock. A. Yes.

Q. So that made 85, you were there with the other people, too? A. With the rest of them.

Q. Where were you——

Judge Biggs: Let's get the number straight. You used the figure 85, and the witness says 93.

Mrs. Bouslog: 93 is the correct figure.

Judge Biggs: Which was it?

Witness: I was with the 93

Q. And at approximately 11 o'clock you and the other union people were released from the police station? A. Yes.

Q. How much was your bail, do you recall?

A. I really cannot recall that.

Q. Were you charged with unlawful assembly at that time? A. No.

Q. What were you charged with?

A. According to the Judge, he gave me a six

(Testimony of Nicholas C. Sibolboro.)

month's suspended sentence, we were blocking the road or highway, or whatever it is.

Q. Obstructing the highway? [70]

A. Maybe.

Mrs. Bouslog: No further questions.

Cross-Examination

By Miss Lewis: May we reserve our cross-examination We had not understood that the proof would go into matters of the City & County of Honolulu, which are certainly not within our——

Judge Biggs: Will this witness be available?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: You may reserve your cross-examination and the Court will take a 5-minute recess.

(To witness) You will remain until they have an opportunity to cross-examine you.

(Temporarily excused.)

(Recess.)

Mrs. Bouslog: Your Honor, I have subpoenaed a witness from another island, and his testimony is not exactly in order, as it bears on the Grand Jury, but for his convenience I would like and appreciate being allowed to call him out of order.

Judge Biggs: Call him out of order.

CHARLES C. YOUNG

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please, Mr. Young? [71] A. Charles C. Young

Q. Where do you live, Mr. Young?

A. Wailuku, Maui.

Q. What is your employment?

A. I am the assistant manager of the Maui Publishing Company.

Q. Are you an officer of the Chamber of Commerce on Maui?

A. I have been president of the Maui Chamber of Commerce since January 1st of this year.

Q. Did you bring with you the original list of members of the Maui Chamber of Commerce as of May, 1947?

A. I have a list of the members of the Maui Chamber of Commerce as of June 30, 1947, and as of April 22, 1948.

Q. That membership in June, 1947, would be approximately the same as May, 1947?

A. That's right

Q. Did you bring with you the resolution and copy of a resolution adopted by the Maui Chamber of Commerce relative to the pineapple situation in May of 1947?

A. I would like to explain that the Maui Chamber of Commerce has no paid manager or executive

(Testimony of Charles C. Young.)

secretary. I am the president of the Maui Chamber of Commerce, and Mr. Franklin E. Skinner is the secretary, and that is in addition to doing his regular work, and I received this 'phone call from the president—the vice president of the Chamber of Commerce at 2:30 yesterday afternoon, and Mr. Skinner was attending the school [72] commissioners' conference on the Island of Molokai. The only thing I have, of the incidents which you are referring to, I have the minutes, a copy of the minutes, of that meeting.

Q. But you don't have a copy of the resolution itself? A. I do not.

Q. Were you present at the time that resolution was adopted?

A. I don't believe that a resolution was adopted.

Q. But you have with you a copy of the radiogram sent to Washington relative to the pineapple situation?

A. I find no record of a telegram being sent to Washington

Q. Do you have with you a copy of the radiogram sent to Washington—or do you have the original record showing the members who were present at the time of voting upon the telegram. You find neither the resolution nor the tlegram?

A. No, I do not.

Q. Did you say you are connected with the Maui News, Mr. Young?

A. I am the assistant manager, yes, Madam.

(Testimony of Charles C. Young.)

Q. I will show you an envelop; clippings—newspaper clippings. (Handing papers to witness.) Does that look to you as if it comes from the paper, the Maui News?

A. It looks like our type.

Q. Will you read it carefully and see if you can tell whether its contents definitely are from your paper; whether [73] it does or not?

Judge Biggs: Don't read it out loud. Read it to yourself? A That's right.

Q. That is from the Maui News?

A. That's right.

Q. But you personally have no recollection of being present at a meeting at which this report shows that the same resolution adopted by the Chamber of Commerce over here was unanimously adopted by the Chamber of Commerce at Maui?

A. I was at that hearing, yes.

Q. Do your minutes show anything in relation to the adoption of such a resolution?

A. I have the original minute book of that particular meeting. It was not in May, however. I have made a copy of that meeting from the secretary's record, under his signature. Do you want me to read it?

Q. Yes, please.

A. Minutes of special meeting held at the Maui Country Club on Friday, June 20, 1947, at 3 p.m. Present: 47 members The officers were present, with president Andrew Moodie presiding. Radio

(Testimony of Charles C. Young.)

broadcast from McKinley High School. The members listened to radio broadcast from McKinley High School in Honolulu. This broadcast was sponsored by the Honolulu Chamber of Commerce and presented speakers who are parties [74] to the present uncertain conditions concerning labor problems in Hawaii. At the conclusion of the broadcast the members endorsed a resolution which had been adopted by the board of directors of the Honolulu Chamber of Commerce dealing with the strike situation in Hawaii. President Moodie was asked to contact the Honolulu Chamber of Commerce, in regard to urging the United States Senate to override President Truman on the Labor Act. This motion was made by Mr. Ezell, and seconded by Mr. Woolaway.

Future plans and policies. Mr. Elsmere and Mr. C. C. Young lead the discussion concerning future plans and policies of the Maui Chamber of Commerce and the president appointed the following special committee to prepare such future policies and plans: Chairman, A. D Woolaway. Members: Dohn, Young, Elsmere, Iichikai Machida, R. Uyeoka. This committee held a meeting following adjournment in order to discuss some of the issues involved. Adjournment: The meeting adjourned at 5:10 p.m. Respectfully submitted: F. B. Skinner, Secretary.

Q. Is this book from which you are reading the record of the Secretary of the Chamber of Commerce?

(Testimony of Charles C. Young.)

A. It is the Maui Chamber of Commerce minute book, from January, 1935.

Q. And I assume this has been regularly kept by the secretaries of the Association? [75]

A. Yes, sir. "Mr. Young" is myself.

Q Mr. Young, you say the secretary of the association—of the organization, was not on the island of Maui at the time when you were contacted regarding the subpoena?

A. Yes, Madam.

Q. Would the secretary have copies of the resolution adopted together with the members who voted, or were the members——

Judge Biggs: Let me interrupt, please.

This is the resolution which Mr. Young has read. What more do you want?

Mrs. Bouslog: Well, the resolution deals specifically with the pineapple dispute.

Judge Biggs: Oh, I see.

Q. Can you tell, or do you know of your own knowledge whether the Elsmore referred to in these minutes is the same E. Stanley Elsmore who is the foreman of the Grand Jury for 1947, in Maui County; the 1947 Grand Jury?

A. He is the only Elsmore I know of on the island of Maui.

Q. E. Stanley Elsmore?

A. Yes, E. Stanley Elsmore I would like to add——

Judge Biggs: Yes, go ahead.

(Testimony of Charles C. Young.)

A. I would like to add, however, that the future plans and polic*ites* of this committee that is named here, on the future plans and policies of the Maui Chamber of Commerce, did not pertain to any strike issue. That part of the meeting was [76] dissolved, and some of us thought that we should do something to fill up our Chamber of Commerce—build it up, and we had a bigger group, larger than we normally have, so this committee was appointed to lay plans for the Maui Chamber of Commerce, for the future, and try to build it up.

Q. Were you the author of this article in the Maui News? A. I don't believe so.

Q. Well, would the Secretary, the regular Secretary, have copies of the resolution itself, about conducting—the plans for the pineapple strike in the pineapple industry?

A. Not having talked with him, I would not say.

Q. But you believe that this is a true report of the resolution similar to the one——

Judge Biggs: Why don't you approach it from the more practical angle.

Q. (By Judge Biggs): Was this witness present at the meeting when the resolution was passed?

Q. Were you present at the meeting when the resolution was passed? A I was.

Q. And the resolution was substantially in the form as that adopted by the Junior Chamber of Commerce in Honolulu?

A. By the Senior Chamber of Commerce in

(Testimony of Charles C. Young.)

Honolulu. The resolution was read and was adopted by a show of hands.

Q. I will show you a copy—— [77]

Judge Biggs: If you are going to ask this witness whether or not, or by the resolution which was adopted——

Mrs. Bouslog: No, your Honor, I am not. I am not going to ask in that particular respect. I am going to ask the Court's permission, and perhaps the defendants will stipulate, that that be done; that we get in touch with the secretary to discover if he has a copy of the resolution, the resolution which was adopted at the meeting pertaining to the pineapple situation.

Judge Biggs: You may handle that as you see fit.

Mrs. Bouslog: May we have the Court's permission to submit subsequently such a resolution with the certificate of the Secretary of the Chamber of Commerce that it was the resolution adopted.

Judge Biggs: Could we so stipulate, Mr. Crockett?

Mr. Crockett: I have no objection to making such a stipulation, subject to our objection as to relevancy.

Judge Biggs: As to relevancy. Mrs. Bouslog, you may have the Court's permission to do that.

(Testimony of Charles C. Young.)

PLAINTIFF'S EXHIBIT No. 8

Maui Chamber of Commerce
Territory of Hawaii
Wailuku, County of Maui

April 29, 1948.

Mrs. Harriet Bouslog
Attorney-at-Law
Pier 11, Honolulu, T. H.

Dear Mrs. Bouslog:

Our president, Mr. Charles C. Young, has asked me to send a reply to your recent telephone call which concerned certain local Chamber of Commerce matters.

In answer to your first question, may I state that our Chamber held a special meeting on June 20, 1947, at which the members endorsed a resolution which had been adopted by the Honolulu Chamber of Commerce and dealt with the labor situation in Hawaii.

No telegram was sent by this Chamber to any member of the United States Senate, urging the members of the Senate to over-ride President Truman's veto of the Labor Act.

Very truly yours,
/s/ F. E. SKINNER,
Secretary.

(Testimony of Charles C. Young.)

RESOLUTION ADOPTED BY BOARD OF DIRECTORS, CHAMBER OF COMMERCE OF HONOLULU, JUNE 5, 1947, CONCERNING STRIKE SITUATION IN HAWAII.

Text of Resolution

Whereas, the welfare of the people of Hawaii and the economy of the Islands are threatened with ruin by strikes, and

Whereas, during the past year and a half there have been 35 strikes called by local union leaders resulting in the loss of 1,925,000 man-days of production, and the loss of $8,500,000 in wages, and

Whereas, some of these strikes were in direct violation of contracts which some union leaders signed with employers, and others were outside the scope of legitimate union activity, and

Whereas, these strikes resulted in mass picketing, violence and intimidation, attacks upon our courts, attempts to enforce monopoly agreements, preaching of hatred and contempt for employers, threats of jurisdictional wars to come, and the grasping for more and more despotic control by some union leaders, and

Whereas, there is the very real threat of an industry-wide pineapple strike, timed to take place at the peak of the season when the ripe fruit must be harvested or lost, and

Whereas, such a strike would mean the loss of about $9,500,000 in wages; loss of a major part of a $60,000,000 crop, if not harvested; loss in tax reve-

(Testimony of Charles C. Young.)

nues to the Territory, and the loss of employment for about 22,000 people, including summer work for students, and

Whereas, ILWU stevedore leaders have threatened to strike the ports of the Territory, and

Whereas, such a strike would cut off Hawaii's vital shipping lifeline, and result in acute suffering to the people of the Territory, with the loss of livelihood for many, and

Whereas, these strikes if continued can mean the destruction of our basic industries and trade, our jobs and our future,

Therefore Be It Resolved, that the Board of Directors of the Chamber of Commerce of Honolulu vigorously condemns such irresponsible union leadership and union tactics as threaten to disrupt Hawaii's economy and ruin her industries, and

Be It Further Resolved, that union members themselves be urged to take an active part in their union affairs and by so doing help make unions in Hawaii responsible and respected organizations, and

Be It Further Resolved, that the people of the Territory be alerted to the dangers of continued strikes, and

Be It Further Resolved, that the Board of Directors of the Chamber of Commerce of Honolulu goes on record as recognizing the right of employees to organize and bargain collectively whenever such action is the result of their own free choice, but also as unalterably opposed to violence, intimidation, and coercive methods by eithe rlabor or management, and

(Testimony of Charles C. Young.)

Be It Further Resolved, that copies of this resolution be forwarded to all members of the Chamber of Commerce of Honolulu, appropriate government officials, editors and publishers, business and civic leaders urging them to pass similar resolutions and unite in a community program to establish sound and constructive employer-employee relations in Hawaii Nei.

Q. Mr. Young, I will hand you a certified copy of a list of grand jurors for the 1947 term of the second circuit court. Your Honor, this pertains to 836.

Judge Biggs: If you are going to have the witness examine the list, you should introduce it in evidence so we may have something to refer to.

Mrs. Bouslog: It is already in the record in the 1947 grand jury. I have merely used this copy. The 1947 grand juror list is a part of the record by stipulation.

Judge Biggs: Very well.

Q. (By Mrs. Bouslog): Will you examine this list, Mr. Young, and determine which of these people were members of your organization?

Mr. Crockett: If the Court please, we object on the ground it is absolutely irrelevant as to whether members of the grand jury were members of the Chamber of Commerce. It has no bearing whatsoever on the case.

(Testimony of Charles C. Young.)

Judge Biggs: I take it this is preliminary to some point that you intend——

Mrs. Bouslog: That is correct, your Honor, that the purpose of the resolution pertaining particularly to the pineapple strike where a large number of plaintiffs are involved, shows actual economic bias and prejudice existed in the community. It shows that the foreman of the grand jury and a number of members of the grand jury actually participated in [79] condemning the union and the people who were involved in it.

Mr. Crockett: At this time we would like to add, if your Honor please, that the record shows already that the attorneys in this matter had full opportunity to examine the grand jurors individually, and this particular matter was not brought to their attention.

Judge Biggs: We note your objection and the Court will make the same ruling as before, note an exception, and the Court will treat the matter as being subject to a motion to strike. Proceed.

Mrs. Bouslog: Your Honor, I might suggest to the Court, to save the Court's time, if this witness could compare the 1947 grand jury list with his membership list.

Judge Biggs: I assumed that was what you were going to ask him to do.

Mrs. Bouslog: Out of Court. It wouldn't take the Court's time while we call them off.

Judge Biggs: Very well, let him compare them,

(Testimony of Charles C. Young.)

leave the witness stand and compare them, and call your next witness; and Mr. Young, will you remain in attendance until this matter is cleared up.

(The witness was excused temporarily.)

JOSEPH K. KAHOLOKULA,

a witness called by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows: [80]

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name and spell it for the clerk, Mr. Kaholokula?

A. The name is Joseph K. Kaholokula, K-a-h-o-l-o-k-u-l-a.

Q. Where do you live, Mr. Kaholokula?

A. At the present moment I am living at Haiku, Maui.

Q. How long have you lived on Maui?

A. All my life.

Q. Are you a member of the International Longshoremen's and Warehousemen's Union?

A. Yes, I am.

Q. How long have you been a member?

A. Since it was organized in 1944.

Q. Do you hold any office under the territorial government?

A. Yes, I am. I am serving as a legislator from the Third District, Island of Maui.

(Testimony of Joseph K. Kaholokula.)

Q. What does the Third District comprise?

A. It comprises the Island of Maui. The Third District is, I don't get your question.

Q. I say what territory does the Third District take in? A. The Territory of Hawaii.

Q. Well, I mean, is it all Maui County?

A. Maui County, Lanai and the Island of Molokai, including Kalaupapa.

Q. (By Judge Biggs): Is the last place named a separate [81] island?

A. It is not a separate island, but that is a settlement where the lepers are.

Judge Biggs: Oh, I see, the leper settlement, yes.

Q. (By Mrs. Bouslog): Now were you an officer of the ILWU at the time of the 1946 sugar strike?

A. Yes, I am the president. I was president of that local.

Q. What local was that? A. Local 144.

Q. What did Local 144, what companies did that include?

A. It included the pineapple, the longshoremen, a miscellaneous group and the sugar.

Q. All through the Island of Maui?

A. Yes, ma'am.

Q. And other counties also?

A. No, ma'am.

Q. It didn't include Lanai or Molokai?

A. No.

(Testimony of Joseph K. Kaholokula.)

Q. Are you the same Joseph Kaholokula who is a defendant in this case before the Court?

A. Yes.

Q. And you have been indicted by the grand jury of Maui County for the Unlawful Assembly Statute? A. That's right.

Q. Will you tell the Court what happened the morning of [82] September 16, 1946, at Paia, Maui?

A. At about five-thirty that morning I arrived at the scene and took part in the picketing with the rest of the boys. I felt being president of that local I should participate by doing part of the work that they were doing, so I walked with the boys. At about six-thirty I noticed on the opposite side of the road five scabs, and so I walked over and spoke with some of the police officers that were on the other side. Then Assistant Chief Freitas of the County of Maui, called the union group together that were picketing and read the law to them, and after that was over Captain Long walked over to one of the union boys, Benny Awana and spoke to him. Whatever took place between the two of them I do not know, I know nothing of that, of the conversation. Then a few minutes after that these so-called five scabs that I mentioned was walking with the assistance of the police officers. At that time the boys were still in a group. It was after Chief Freitas got through; they were still dazed and did not know what was what, when this group came, and I noticed that one of the boys did bump into this

(Testimony of Joseph K. Kaholokula.)

Benny Awana, and when this happened there was confusion among the members and the scabs, and all I heard was, "That's all boys, there is nothing else you can do," and the boys, the scabs walked on the opposite side and stayed there. Right after that myself and the Assistant Chief—I forgot whether we went in his car or in mine—we went and had breakfast.

Q. Did he say anything to you that he was going to arrest all those people?

A. No, ma'am, there was no arrest at that particular time. There was no arrest.

Q. Did picketing go on up there for the rest of the day? A. Yes, ma'am.

Q. Did anybody get hurt? A. No, ma'am.

Q. Did anybody get a scratch of any kind?

A. No, ma'am, there was no such thing.

Q. Did the police officers order the union boys to go home?

A. No, I never heard that. If there was anything said, I wasn't present at that time. I left, as I stated just a few moments ago, I left with Chief Freitas.

Q. Do you know what law it was that was read?

A. No, ma'am; I wasn't interested in that, because I was talking to some of the boys.

Q. Is this a copy of the indictment that was served upon you, or the original of the indictment that was served on you?

Mr. Crockett: We will stipulate that it is.

(Testimony of Joseph K. Kaholokula.)

Judge Biggs: It is so stipulated.

A. Yes, ma'am.

Q. This indictment was returned by the 1946 grand jury?

Judge Biggs: That appears from its face, does it not? [84]

Mrs. Bouslog: I don't believe it is a part of the record. I will offer it in evidence and ask the Court's permission to substitute a cleaner copy at a later time.

Judge Biggs: You may do so. This is number 9.

(The document referred to was marked Plaintiff's Exhibit No. 9 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 9

In the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, January, A.D. 1946, Term

TERRITORY OF HAWAII

vs.

JOSEPH KAHOLOKULA, LEVI KEAloha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Abreu, Joseph Sebastin; Ah Lee Sam, Richard; Alvares, Frank R.; Apo, Lam-

(Testimony of Joseph K. Kaholokula.)

bert; Auweloa, William; Boteilho, Alfred; Boteilho, Harry; Callido, Antone; Coelho, Thomas; Corniel, John; Cravalho, John; Corniel, Daniel; Coson, Calixtro; Doi, Kiyoto; Feiteira, Ernest; Flores, James Beristo; Franco, Frank; Franco, Julio; Fernandez, Ernest; Fukushima, Hiroshi; Fukushima, Pulehu; Gouveia, Antone; Herreira, Louis; Hu, Joseph; Hara, Juan; Higa, James F.; Jardin, Edward Gomes; Kim Choo Hai; Kaea, Ernest; Kaio, John; Kealoha, Solomon; Lacio, Martin; Lindsey, George; Martins, George; Medeiros, Fred Carlos; Moniz, Charles Paulos; Matsui, Frank; Nascimento, John; Nakasone, Buta; Nishimura, Johnny; Ogata, Kiyoto; Ortiz, John; Pacheco, Lawrence Torres; Perreira, Alfred; Perry, Raphael; Pico, Manuel Perreira; Ponce, Henry Leopoldo; Ponce, Manuel; (D.D.) Peters, Joe; Ponce, Joseph; Ramos, Rosario; Sasaoka, Taroichi; Sera, Hitoshi; Shiroma, Lawrence E.; Soto, Fermin; Sakaida, William; Takemura, Edward; Taniguchi, Robert; Tomita, Dondo; Tomita, Takeji; Tosaka, Kiyoshi; Vierra, Antone S.; Yoneda, Masaru; Yasunaga, Roy.

INDICTMENT

Riot and Unlawful Assembly

First Count

The Grand Jury of the Second Judicial Circuit of the Territory of Hawaii, do present that Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui,

(Testimony of Joseph K. Kaholokula.)

Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auweloa, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, Frank Matsui, John Nascimento, Buta Nakasone, Johnny Nishimura, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce (D.D.), Joe Peters, Joseph Ponce, Posario Ramos, Taroichi Sasaoka, Hitoshi Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Dondo Tomita, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, Roy Yasunaga, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to wit, the 16th day of October, 1946, then and there being of their own author-

(Testimony of Joseph K. Kaholokula.)

ity assembled together with disturbance, tumult and violence and striking terror or tending and intending to strike terror into others, thereby being in unlawful assembly, did unlawfully and feloniously join together in doing and beginning to do certain acts with tumult and violence, to wit, assaulting, shoving, pushing and using menacing language and gestures and other hostile signs and demonstrations, tending and intending to strike terror into others, to wit, Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden and others, then and there being, contrary to the form of the statute in such cases made and provided.

Second Count

And in order to set forth the unlawful and felonious acts of the defendants above named with reference to the acts and transactions mentioned in the first count hereof in different form and count in order to meet the proof, the Grand Jury aforesaid, do further say and present that Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alvares, Lambert Apo, William Auweloa, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson,

(Testimony of Joseph K. Kaholokula.)

Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, Frank Matsui, John Nascimento, Buta Nakasone, Johnny Nishimura, Kiyoto Ogata, Josh Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira Pico, Henry Leopoldo Ponce, Manuel Ponce (D.D.), Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Dondo Tomita, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, Roy Yasunaga, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to wit, the 16th day of October, 1946, of their own authority, did unlawfully and feloniously assemble together with disturbance, tumult and violence, to wit, by then and there assaulting, shoving, pushing and using menacing language and gestures and making other hostile signs and demonstrations toward, and thereby striking terror and tending and intending to strike terror into, others, to wit, Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholo-

(Testimony of Joseph K. Kaholokula.)

kula and Conrado P. Corden and others then and there being, contrary to the form of the statutes in such cases made and provided.

Third Count

And in order to set forth the unlawful and felonious acts of the said defendants with reference to the acts and transactions mentioned in the First Count hereof in different form and count in order to meet the proof, the Grand Jury aforesaid do further say and present that Joseph Kaholokula, Levi Kealoha, Benjamin Kahaawinui, Benjamin Awana, Leocadio Baldovi, Soichi Doi, Yoshio Nagata, Lionel Hanakahi, Jack Hao, Koichi Ito, David Kina, George Kukahiko, Charles Reveira, Takeshi Shimano, Joseph Sebastin Abreu, Richard Ah Lee Sam, Frank R. Alves, Lambert Apo, William Auweloa, Alfred Boteilho, Harry Boteilho, Antone Callido, Thomas Coelho, John Corniel, John Cravalho, Daniel Corniel, Calixtro Coson, Kiyoto Doi, Ernest Feiteira, James Beristo Flores, Frank Franco, Julio Franco, Ernest Fernandez, Hiroshi Fukushima, Pulehu Fukushima, Antone Gouveia, Louis Herreira, Joseph Hu, Juan Hara, James F. Higa, Edward Gomes Jardin, Hai Choo Kim, Ernest Kaea, John Kaio, Solomon Kealoha, Martin Lacio, George Lindsey, George Martins, Fred Carlos Medeiros, Charles Paulos Moniz, Frank Matsui, John Nascimento, Buta Nakasone, Johnny Nishimura, Kiyoto Ogata, John Ortiz, Lawrence Torres Pacheco, Alfred Perreira, Raphael Perry, Manuel Perreira

(Testimony of Joseph K. Kaholokula.)

Pico, Henry Leopoldo Ponce, Manuel Ponce, Joe Peters, Joseph Ponce, Rosario Ramos, Taroichi Sasaoka, Hitoshi Sera, Lawrence E. Shiroma, Fermin Soto, William Sakaida, Edward Takemura, Robert Taniguchi, Dondo Tomita, Takeji Tomita, Kiyoshi Tosaka, Antone S. Vierra, Masaru Yoneda, Roy Yasunaga, together with divers other persons whose names are to the Grand Jury unknown, at Paia, County of Maui, Territory of Hawaii, on to wit, the 16th day of October, 1946, of their own authority did unlawfully and feloniously assemble together with intent to, and did, aid, countenance, incite and encourage each other, by conduct striking and tending and intending to strike terror into others, including certain employees of the Maui Agricultural Company, Limited, a Hawaiian corporation, namely, Benedict Nelso Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden and others, to wit, by disturbance, tumult and violence and menacing language and hostile signs and demonstrations, to prevent said employees from entering the premises of said corporation for the purpose of proceeding to the place of and engaging in their employment, thereby unlawfully depriving said Benedict Nelson Souza, William Moniz, William K. Kaholokula and Conrado P. Corden of their rights and endangering the liberty of the said Benedict Nelson Souza, William Souza, William Moniz, William K. Kaholokula and Conrado P. Corden contrary to the form of the statutes in such cases made and provided.

(Testimony of Joseph K. Kaholokula.)

A True Bill found this 30th day of October, 1946.

/s/ WENDELL F. CROCKETT,
Prosecuting Officer,
County of Maui.

/s/ D. DEASE,
Foreman of the Grand Jury.

Admitted.

Q. Have you ever known, or do you know a man by the name of Jose Pias?

A. That's right, I do know him.

Q. Was he alive on October 16, 1946?

A. No, ma'am, he is dead.

Q. How long had he been dead at that time?

A. About four years.

Q. And is that the same one who appears as having been indicted by the grand jury?

A. That's right, ma'am.

Judge Biggs: I am not clear as to what you have proved. Have you proved the grand jury indicted a man who had been dead a number of years at the time of the occurrences?

Mrs. Bouslog: Yes, your Honor. I think it was discovered he was dead when there was an attempt to serve the indictment on him and it was stricken at that time, and the copy shows a line through it.

Judge Biggs: The indictment will speak for itself.

Q. (By Mrs. Bouslog): Now, you say you had

(Testimony of Joseph K. Kaholokula.)

breakfast with Chief Freitas after the incident happened? [85] A. Yes, ma'am.

Q. How soon were you arrested after this happened? A. Oh, I just can't recall how long.

Q. Was it that day? A. No, ma'am.

Q. Was it the next day? A. No, ma'am.

Q. And you had no indication that the police thought there had been any violation of law or that there had been or was no attempt to arrest anyone present at that time? A. No, ma'am.

Q. And how many police officers were present?

A. Well, a good 20, I presume. That is not the right figure, but about 20.

Q. Mr. Kaholokula, who is manager of the Maui Agriculture Company? A. At that time?

Q. Yes. A. Harry A. Baldwin.

Q. Harry A. Baldwin. What office did Asa Baldwin hold?

A. Assistant manager. Whether he already took office before this strike, I wouldn't know, but anyway Harry A. Baldwin was manager of that company. That I know of.

Q. At the beginning of the strike?

A. I can't say whether he was during the strike.

Q. And was Asa Baldwin, to the best of your recollection, the assistant manager?

A. Yes, ma'am.

Q. What office with Maui County did Asa Baldwin——

A. Pardon me. He was the manager. That's right; Asa Baldwin was manager of the company.

(Testimony of Joseph K. Koholokula.)

Q. He had taken over from the other Mr. Baldwin? A. Yes.

Q. What official office did Mr. Asa Baldwin hold with the county in addition to his connection with the company?

A. If I am not mistaken he was also police commissioner on that island.

Q. Was he chairman of the police commission, or just a member?

A. I think a member of the police commission.

Q. Was there any attempt made to unseat you in the Legislature as a result of this?

A. Well, not that I know of. There was a little talk that is only hearsay, but whether they wanted to do that, I don't know.

Q. Were you running for election during the sugar strike?

Judge Biggs: Don't you think you have pursued that to the point past relevancy, Mrs. Bouslog?

Mrs. Bouslog: We are trying to show, your Honor, the individual damage too, but I will turn the witness over [87] to Mr. Crockett at this time.

Judge Biggs: How would that prove individual damage? The witness is a member of the Legislature. Obviously the talk had no effect on his election. How then would it prove damage?

Mrs. Bouslog: Well, it shows that he was purposefully and wilfully discriminated against and denied equal protection of the laws for a purpose which wasn't——

(Testimony of Joseph K. Koholokula.)

Judge Biggs: Unsuccessfully, however.

Mrs. Bouslog: Unsuccessfully.

Judge Biggs: I think that is too far afield.

Mrs. Bouslog: Your witness, Mr. Crockett.

Judge Biggs: Cross-examine.

Cross-Examination

By Mr. Crockett: If the Court please, could we take our noon recess now?

Judge Biggs: Suppose we clear up Mr. Young before we conclude. He is back in the courtroom now. Your examination will be proceeded with this afternoon after the noon recess.

Mr. Crockett: Might I call the Court's attention, before proceeding, that counsel referred to the indictment of Jose Pias, a man who is dead. The copy of the indictment shows that that name was stricken from the indictment.

Judge Biggs: Yes, the Court stated the indictment [88] would speak for itself.

Mr. Crockett: And he wasn't indicted.

Judge Biggs: The indictment will speak for itself.

Mr. Crockett: Yes, that is correct.

Judge Biggs: Now let's have Mr. Young.

CHARLES C. YOUNG,

a witness called by and in behalf of the Plaintiffs, resumed the stand, having been previously sworn, was examined further as follows:

Direct Examination (Cont.)

By Mrs. Bouslog:

Q. Mr. Young, have you compared the persons on the membership list of the Senior Chamber of Commerce with the 1947 grand jury?

A. I have.

Q. Can you state what members of the 1947 grand jury were also members of the Senior Chamber of Commerce of Maui?

A. Well, there were 10 out of 50 members of the grand jury who were members of the Maui Chamber of Commerce as of June 30, 1947: Ray M. Allen, Allen H. Ezell——

Q. (By Judge Biggs): What did Allen do?

A. Sir?

Q. What is his business?

A. He is manager of the Wiluku Sugar Company. Mr. Allen H. Ezell, Joseph H. Trask, H. S. Peterson, Frank W. Broadbent, [89] E. Stanley Elmore, Albert D. Waterhouse, Andrew Moody, Edward H. Baldwin, and Charles E. Morris.

Q. And those were all members of the Chamber of Commerce on June 30, 1947?

A. Yes, ma'am.

Q. Now, Mr. Young, do you know of your own knowledge the difference between the Junior Chamber of Commerce and the Senior Chamber of Com-

(Testimony of Charles C. Young.)

merce on Maui, what are the differences in qualification for membership?

Mr. Crockett: We object, if the Court please. It is incompetent, irrelevant and immaterial.

Judge Biggs: Yes, is that relevant? Is it necessary to explain the distinction between the chambers?

Mrs. Bouslog: The only reason I want to know, your Honor, is if possible to avoid calling another witness. I want to know if Mr. Young knows of his own knowledge the members of the Junior Chamber of Comerce so that he could testify as to——

Judge Biggs: Ask him that question.

Q. (By Mrs. Bouslog): While you were examining this list of grand jurors, did you run across additional names that are, of your own knowledge, members of the Junior Chamber of Commerce?

Mr. Crockett: We object to the question, your Honor, on the grounds that the proof is not properly offered and [90] not the question the Court suggested to counsel.

Judge Biggs: You misunderstood the Court's statement, Mr. Crockett.

Mrs. Bouslog: We offer to show, your Honor

Judge Biggs: You are proceeding rather irregularly as to proof, Mrs. Bouslog. The proper way to prove membership would be to bring in the secretary of the Junior Chamber. Do you make that objection, Mr. Crockett?

(Testimony of Charles C. Young.)

Mr. Crockett: Yes, your Honor, and also it is not relevant as to who the members are.

Judge Biggs: You do object on the ground the offer of proof is not proper?

Mr. Crockett: Yes.

Judge Biggs: We will have to sustain the objection.

Q. (By Mrs. Bouslog): When the vote was taken, Mr. Young, on the resolution which you reported a while ago, were there any dissenting hands indicating opposition to the resolution on the labor situation? A. I can't recall.

Q. The article in the newspaper states unanimously. Is that to the best of your recollection?

A. To the best of my recollection, yes.

Q. Do you know from examining the list of the 1947 grand jury whether any of the members that you named were present at that meeting? [91]

A. Yes, there were. I read some of them in the minutes there. Yes, Mr. Elmore was present. Mr. Moody was president of the Chamber at that time. Those are two that I know were there. Mr. Ezell, I don't remember.

Q. Do you recall whether there were any other members on that list of 10 you read off who were present at that meeting? Would you look down the list of 10 and see if you can recall?

A. That is what I am doing. Those are the only two that I can recall.

Mrs. Bouslog: Your Honor, I will ask the Court

(Testimony of Charles C. Young.)

for permission to get the copy of the resolution from the Secretary without the necessity of producing the secretary since the president has been produced, and also to produce the telegram which has been referred to in the minutes with a certificate of the secretary, if the defendants have no objection as to the form, and merely legal objections.

Judge Biggs: You reserve your objection as to pertinency. Do you have any objection as to form?

Mr. Crockett: We have none.

Mrs. Bouslog: Your witness, Mr. Crockett.

Judge Biggs: Suppose we go ahead for a few minutes. There are a good many witnesses, aren't there? Would you prefer to take your recess now?

Mr. Crockett: We have no questions from Mr. Young.

Judge Biggs: Very well then, that concludes the testimony. Thank you, Mr. Young.

(The witness was excused.)

Judge Biggs: The Court thinks that probably a little bit longer recess than usual might be desirable from the viewpoint of counsel. The Court will stand in recess until 2:00 p.m.

(At 12:25 p.m. a recess was taken until 2:00 p.m.)

2:00 p.m. Session

Judge Biggs: Before we proceed, there is a matter which probably should be cleared up. The Clerk informs me that no Exhibit 8 has as yet been offered. That, Mrs. Bouslog, was for the resolution which was to be offered.

Mrs. Bouslog: Yes, your Honor, that number was for the resolution. Mr. Crockett has stipulated that he will not object as to the form of this, and the president of the Chamber of Commerce, Mr. Young, who was here, stated that he will get the secretary to furnish a copy of the resolution together with the telegram which was also referred to.

Judge Biggs: Is there a stipulation as to the telegram as well?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: Very well then, that number 8, I have it marked here as reserved. Shall we proceed?

Mrs. Bouslog: Mr. Crockett has stipulated that subject to his objection as to materiality, that I may obtain [93] from the Secretary of the Junior Chamber of Commerce the list of its members who were members of the 1947 Maui grand jury, and that I may submit these lists to the Court, and also a copy of the resolution adopted by that body in relation to the pineapple dispute.

Judge Biggs: The reservation is only as to relevancy?

Mrs. Bouslog: That's right, your Honor.

Judge Biggs: Very well. Two witnesses were reserved for cross-examination. One was Mr. Young and the other was Mr. Sibolboro.

Mrs. Bouslog: Mr. Young has been excused.

Judge Biggs: Yes, he was concluded with. His testimony was concluded.

Mrs. Bouslog: Mr. Sibolboro and Mr. Kaholokula, who was on the stand. I would like to recall,

with Mr. Crockett's permission, Mr. Kaholokula for two questions only.

Judge Biggs: Very well.

JOSEPH K. KAHOLOKULA,

a witness by and in behalf of the Plaintiffs, resumed the stand; having been previously sworn, was examined further as follows:

Direct Examination (Cont.)

By Mrs. Bouslog:

Q. Mr. Kaholokula, what is your race or nationality?

A. Hawaiian and a little Caucasian. [94]

Q. Hawaiian and a little Caucasian?

A. That's right.

Q. Do you know the precent?

A. Nothing to talk about. I might as well call myself a pure Hawaiian.

Mrs. Bouslog: For the information of the Court, this document is entitled "Plantation House Rules, Hawaiian Commercial and Sugar Company, Ltd." They are the same for the various plantations on the island of Maui. This copy was furnished to me by the lawyers for the Hawaiian Commercial and Sugar Company.

Judge Biggs: Is it agreed that they are the same for all the plantations on the island of Hawaii?

Mrs. Bouslog: Maui, the island of Maui.

(Testimony of Joseph K. Kaholokula.)

Mr. Crockett: So far as I know at the present time, if the Court please.

Judge Biggs: We will admit it subject to the usual reservation and to the further provision that if you find that they are not so applicable, you may point that out to the Court.

Mrs. Bouslog: For the Court's information, Rule No. 6 provides that the following shall be causes for discharge: Personal conduct which violates standards of normal decency or morality of the community.

Judge Biggs: No objection to its being offered, other than the objection as to relevancy?

Mr. Crockett: That is correct.

Judge Biggs: Let it be admitted subject to the same ruling; Plaintiff's Exhibit No. 10.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 10 and was received in evidence.)

PLAINAIFF'S EXHIBIT No. 10

PLANTATION HOUSE RULES

Hawaiian Commercial & Sugar Co., Ltd.

Section 18 of the Agreement between Hawaiian Commercial & Sugar Company, Limited and the I.L.W.U. Local 144, Unit 2, provides in part; "Employees shall be subject to discipline or discharge by the Company for insubordination, pilferage, drunkenness, incompetence, failure to perform the work as required, violation of the terms of this

(Testimony of Joseph K. Kaholokula.)

Agreement or failure to observe safety rules and regulations, and the Company's house rules which shall be conspicuously posted."

In order to comply with this provision of the Agreement, the Hawaiian Commercial & Sugar Company Limited hereby posts rules covering subjects not specifically mentioned in this Section 18 of the Agreement. The following items will be considered violations of Company house rules and be cause for discipline or discharge:

1. Insubordination, including the refusal or failure to perform work as assigned; the use of profane, abusive or obscene language toward fellow employees, including supervisors; and fighting or attempting or threatening bodily injury.

2. Pilferage or theft of Company property.

3. Violation of the terms of the Union Agreement.

4. Willful destruction or defacing of property or equipment of the Company, or negligence or carelessness resulting in damage to the property or equipment of the Company.

5. Failure to report breakage, damage or loss of plantation property and equipment to a supervisor.

6. Personal conduct which violates standards of common decency or morality of the community.

7. Violation of any ordinance or statute involving moral turpitude, and in particular the following:

(a) Carrying concealed or unlicensed or unregistered firearms.

(Testimony of Joseph K. Kaholokula.)

(b) Introduction, possession or use of habit-forming drugs on the property of the plantation.

8. Smoking in restricted areas where "No Smoking" signs are posted.

9. Offering or receiving money or other valuable considerations in exchange for a job, better working place or any change in working conditions.

The following house rules apply during working hours or at the place of work:

10. Reporting to work in an intoxicated condition, drinking intoxicating liquors during working hours or at the place of work.

11. Failure to perform the work as required either due to incompetence or to carelessness in following instructions.

12. Failure to observe and carry out safety rules and operating regulations as posted by the Company in regard to the individual and to others.

13. Gambling while at work or at the place of work.

14. Willfully and intentionally falsifying reports and records.

15. Repeated tardiness in reporting to work and sleeping while on duty.

16. Soliciting or canvassing in any form during working hours not authorized by management.

17. Unreported or unexcused absence for a period of six consecutive work days. Such unauthorized absence will be considered as a resignation.

The above house rules shall be subject to amendment from time to time.

(Testimony of Joseph K. Kaholokula.)

Mrs. Bouslog: That's all.

Cross-Examination

By Mr. Crockett: If the Court please, I believe it would be helpful to the Court at this time for the defense to offer a group of five pictures which we will identify through Mr. Kaholokula.

Judge Biggs: You have no objection to those being offered out of order?

Mrs. Bouslog: No, your Honor.

Judge Biggs: Very well; Exhibit A, all as one exhibit please.

(Thereupon, the documents referred to were marked Defendant's Exhibit No. A and received in evidence.)

Q. (By Mr. Crockett): Mr. Kaholokula, did you have a chance to examine the pictures which the police had of that incident at Paia? A. Yes.

Q. Would you examine these pictures which I have just offered in evidence and identify them for us; showing you first the [96] picture which is marked No. 1. Would you examine that and tell us what scene that represents?

A. Well, I see here the men doing the picketing; that is, walking, that morning.

Q. That is a picture of the scene?

A. That's right.

Q. On the morning when this incident occurred?

A. October 16th, yes, in front of Paia Store.

Q. I believe on your direct examination you testified it was September 16th.

(Testimony of Joseph K. Kaholokula.)

A. Well, that wasn't the correct date. October, it must have been.

Q. October 16th? A. That is correct.

Judge Biggs: Are you going to refer to these as A-1, A-2, etc?

Mr. Crocket: Yes.

Judge Biggs: They will be so marked.

(The documents referred to were marked Defendant's Exhibits Nos. A-1, 2, 3, 4, 5.)

Q. Now, would you testify a little more in detail, what portion of the premises does this picture indicate or refer to? There is a road shown there. What road is that?

A. Well, this is county road, and part of the plantation premises. [97]

Q. Is that near the mill? A. That's right.

Q. And it is also near the office of the plantation?

A. Well, this picture was taken, I think—yes, it is near to the plantation office.

Q. In other words, the road in question, there is the mill on one side of the road and the plantation office on the other side? A. That's right.

Q. And is that a fairly accurate representation of how the men were picketing that morning?

A. That's right.

Q. From your examining that picture, could you say whether or not that was apparently taken before the incident or after the incident?

(Testimony of Joseph K. Kaholokula.)

A. Yes, sir, I do.

Q. Yes, do you know what that building is?

A. Yes, sir.

Q. What is it?

A. That is the roundhouse where the locomotives are being stored.

Q. I see. Now there seems to be a path here in the foreground, [100] in the lower edge of the picture. Where does that path lead?

A. That is the main road.

Q. That is the main road? A. Yes.

Q. I see. Now what is to the right of that main road behind this tree on the right? What I am trying to find out is the relation to the company's property.

A. The load leads right down past this tree. There is nothing beyond this tree but the government road.

Q. Does that road run across the picture?

A. Yes, your Honor.

Q. Let me point out what I mean here. I am referring to this little open place in the lower part of the picture. What is that? If you walked back here, off the picture——

A. You would go to the main office.

Q. The main office? A. Yes, your Honor.

Judge Biggs: Thank you. Mr. Crockett, will you proceed?

Mr. Crockett: If the Court please, I might say some of the other details of the pictures we will develop by other witnesses later on.

(Testimony of Joseph K. Kaholokula.)

Judge Biggs: Very well.

Q. (By Mr. Crockett): As I understand it, Mr. Kaholokula, the men were picketing by walking up on the side of the road [101] near the mill, were they not? A. Yes, sir.

Q. And the men that you call the scabs, they were on the side of the road on which the office is located? A. That's right.

Q. Did you know the names of any of these persons whom you refer to as scabs? A. Yes, sir.

Q. What were their names?

A. Nelson Souza, William Souza, Louis Souza, Louis Moniz and William Kaholokula.

Q. William Kaholokula; is he any relation to you? A. That's right.

Q. What relation? A. First cousin.

Q. Now you said that a scab was a person who was taking the job of the strikers, is that what you said? A. That's right.

Q. How long have you known these men you just named?

A. Known them ever since childhood.

Q. Where had they been employed previous to the time of the strike?

A. Louis Moniz was employed at H. C. & S. Company and William Kaholokula has been with various concerns, mostly with contractors, and the rest of them, the three others, was brought [102] up right on the plantation and worked at the plantation.

(Testimony of Joseph K. Kaholokula.)

Q. At the time of the strike, wasn't it a fact that those other two you mentioned were employees of the M.A. Company? A. They were.

Q. So that all five of them immediately prior to the strike were employees of the M.A. Company?

A. That's right.

Q. Isn't it a fact that prior to the time of this incident they were members of the union.

A. That's right.

Q. And had withdrawn and desired to return to work; is that not a fact? A. That's right.

Q. Now on the morning this incident occurred at about 6:30 didn't you have a talk with some of those men? A. I did not.

Q. You didn't talk to them in the presence of Mr. Freitas at any time that morning before the incident occurred? A. No, sir.

Q. Were you present when they were talking to some of the strike leaders?

A. I know the family of Gordon did approach Gordon and told him, "I think it is best that you go home." That was all.

Q. You didn't say anything to Kaholokula, or Kaholokula explain why he wanted to go to work?

A. No, sir.

Q. Didn't any of the five men explain why they wanted to return to work? A. No, sir.

Q. That wasn't in your presence?

A. No, not in my presence.

Q. They didn't tell you they didn't get enough

(Testimony of Joseph K. Kaholokula.)

food and couldn't support their families and that was why they wanted to return to work?

A. No, sir.

Q. I understand you had no conversation with them at all? A. No, sir.

Q. Did you have any conversation with Mr. Freitas before this incident occurred?

A. Yes, I talked to him and talked to the rest of the police officers.

Q. Who was present when you talked with Freitas?

A. Well, I wouldn't know, all the police officers who were there.

Q. How about Kealoha, was he there?

A. I wouldn't know. I just can't say whether he was there.

Q. Was Kawano there talking at the time when Freitas was talking to you?

A. He was in Paia, but I don't recall if he was close by.

Q. Isn't it a fact he was standing around there?

A. I can't say whether he was.

Q. You don't remember at this time?

A. I don't remember.

Q. Can you recall anything that was said between you and Mr. Freitas?

A. The only thing that he and I talked about, he told me, "Well, Joe, I think let's go for breakfast," and that we did.

Q. Was that before the incident?

(Testimony of Joseph K. Kaholokula.)

A. I beg your pardon?

Q. Was that before that incident?

A. After.

Q. Well, I believe you said you had a talk with Freitas before the incident.

A. Well, just talking as a friend together, "Well, how's things"? and everything else. I told him, "Everything is all right."

Q. You don't recall having a talk with them when Kalua was there and Kawano was there and Kawano said there was going to be trouble if those men tried to go through?

A. I don't remember that.

Q. And further said that there was going to be violence? A. I don't remember.

Q. You don't remember a remark being made, "You fellows better get ready"? A. No, sir.

Q. You don't remember that? A. No, sir.

Q. You don't remember any other conversation except just a little friendly talk that morning.

A. That's right.

Q. After the incident happened, you say you and Freitas went up to the restaurant and had a cup of coffee?

A. That's right, and this is what I told Chief Freitas, that I congratulated him for the fine work carried on by him. If it wasn't for him they could have gone a lot further than what took place, but he ordered the scabs out.

Q. And you told him you had men standing by

(Testimony of Joseph K. Kaholokula.)

at Spreckelsville and Puunene to come up if there was a demonstration?

A. I don't remember telling him that.

Q. Do you recall having a meeting later on during that day, kind of a rally, up near the Paia Theater?

A. Yes, we did have a meeting, a rally.

Q. And at that time did you make a speech?

A. I did.

Q. Do you recall making a remark or saying that it was a wonderful showing they made, or something to that effect, that the Maui police couldn't stop——

A. I did not say that.

Q. And that even if they brought the Honolulu police they couldn't get through the lines? [106]

A. I did not say that.

Q. Do you recall a few days after that making a speech at Lahaina? A. I did.

Q. How many days after this incident was that?

A. I wouldn't know just how long after that.

Q. Well, as a matter of fact, it was the following Saturday, wasn't it? A. It could be.

Q. Well, was it or was it not?

A. Well, I can't say. I don't remember the date.

Q. Well, at the speech you made at Lahaina on that Saturday which is a date you don't remember, you referred to the Paia incident, didn't you?

A. I think I spoke a little about the Paia incident.

(Testimony of Joseph K. Kaholokula.)

Q. And you mentioned the fact that the picket line was so strong nobody could go through, or something to that effect, didn't you?

A. Well, having from four to five hundred picketers and only five going to push through, how can you go through there?

Q. You talked about it at Lahaina?

A. I don't recall. Maybe I did.

Q. Well, would you say you didn't?

A. I just can't say.

Judge Biggs: Won't you please answer the questions? [107] Your answers are not responsive. Either you do or you do not remember. If you do not remember, you may say so.

A. I don't recall.

Judge Biggs: If you do remember, we want your testimony.

Q. Do you recall making a statement at Lahaina something to this effect: "At Paia some men tried to go back to work and we stopped them. The police tried to help them but we were stronger. Assistant Chief Freitas and the police were there. We defied the police. If it wasn't for the smartness of Assistant Chief Freitas, there would have been bloodshed." A. I said that.

Mr. Crockett: That is all.

Judge Biggs: Any further questions?

Mrs. Bouslog: No further questions.

Judge Biggs: Thank you.

(The witness was excused.)

Judge Biggs: Your next witness, please, Mrs. Bouslog.

Mrs. Bouslog: I will call Benjamin Awana.

BENJAMIN AWANA,

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please? [108]

A. Benjamin K. Awana.

Q. What is your nationality?

A. Chinese, Hawaiian, Samoan and Irish.

Q. (By Judge Biggs): Could we have the witness spell his name, please? A. A-w-a-n-a.

Q. (By Mrs. Bouslog): At the beginning of the sugar strike in 1946, were you employed by the Maui Agricultural Company? A. I was.

Q. Were you a member of the union?

A. Yes.

Q. Did you hold any office in the union?

A. I was secretary for my union local 144, unit 1.

Q. Were you, as an officer of the union, were you partly responsible for picketing, or did you hold any other position in connection with the strike activities?

A. Well, I was more or less connected with the administration of the unit than anything else.

(Testimony of Benjamin Awana.)

Q. Did you hold any position on an island-wide or territorial-wide——

A. Yes, I did serve on the strike strategy committee. That was before the strike from August 1st to 30th, I think.

Q. Before the sugar strike what was your job at the Maui Agriculture Company?

A. I was an electric welder. [109]

Q. How long had you worked for them at that time? A. Since September 7, 1945.

Q. Was there a strike vote conducted at Paia to determine whether or not the membership would go on strike? Was there a strike vote conducted before the strike? A. Yes, there was.

Q. Do you know what the result of that vote was? A. At least 90%.

Q. To strike? A. Yes, to strike.

Q. Were you present on the picket line in front of Maui Agriculture Company on September 16, 1947?

A. I wasn't. I don't remember that date.

Q. I beg your pardon, were you present on October 16th? A. Yes, I was.

Q. Will you tell the Court what happened on that occasion from the time you arrived until after the incident occurred?

A. Well, on the morning of the incident I arrived at about five o'clock for the purpose of walking the picket line. Then a little before 6:30 or around 6:30 these five scabs came down to the place where the incident happened and walked on the

(Testimony of Benjamin Awana.)

other side of the road. A few minutes later Mr. Freitas summoned the pickets, called them together in a group, so we stopped picketing and went over to see what is cooking. Well, he read some law to us about a trespass and loitering [110] of some sort, which I have given you a copy marked in red, and just when he got through talking, we were going to get ourselves organized back into a walking picket line, police officer Captain Long of the Paia department and about ten other police officers approached me, and he told me, "Ben, the boys are going to work." Well, I didn't say nothing, and this scab just pushed me and we pushed him back, that is, the scabs and the police. There was no one was knocked down or hurt, and we weren't arrested or ordered to disperse.

Q. About what time was it when this incident happened?

A. I would say right a little before, around ten to, I imagine.

Q. (By Judge Biggs): Around what?

A. Around ten to seven.

Q. (By Mrs. Bouslog): You mean ten minutes before seven o'clock in the morning?

A. Around that.

Q. And about how long did all this take, from the time the police officer came up and read the trespass statute to you?

A. It didn't take—well, three or four minutes, I guess.

(Testimony of Benjamin Awana.)

Q. Was anybody scratched or bruised in any way? A. Not that I know of.

Q. Was any order given by the police to you or to any other person present to disperse or to open up the lines or do anything? [111] A. No.

Q. (By Judge Biggs): Were any blows struck?

A. No.

Mrs. Bouslog: Mr. Crockett, I have here a copy of the Session Laws of Hawaii, 1945.

Mr. Crockett: No objection, if the Court please, except that we haven't checked it as to detail.

Judge Biggs: Very well, you may check it as to detail, and if it appears to be inaccurate, you may inform the Court.

Q. (By Mrs. Bouslog): Mr. Awana, I hand you a document that reads "Session Laws of Hawaii, 1945" and has at the top a note that says, "This is what the cops read to us." Did you give that to me? A. Yes.

Q. Where did you get it from?

A. I obtained it from, well, Captain Henry Long of the Paia Police Department had a whole armful of them and gave it to us I think in the month of, the latter part of September or the early part of October. He came to one of our meetings, uninvited.

Q. You were standing where you could hear the police officers that morning at the time of the incident? A. Yes.

Q. Will you read the part that was read to you by the police into the record here? [112]

(Testimony of Benjamin Awana.)

A. (Reading) "Whoever, without right, enters or remains in or upon the dwelling house, buildings or improved or cultivated lands of another or the land of another about or near any buildings used for dwelling purposes, after having been forbidden to do so by the person who has lawful control of such premises, either directly or by notice posted thereon, and any person who wilfully tears down or defaces any such notice, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than two hundred fifty dollars or by imprisonment of not more than three months, or by both fine and imprisonment."

Q. Does that paper indicate on the top from what section of the Revised Laws that is?

A. It says, "Section 11751, Trespass, penalty."

Q. And is that all that was read to you?

A. Well, that was about all I heard, to the best of my knowledge.

Q. This part down here was also read.

Mrs. Bouslog: Your Honor, I will call the Court's attention to the fact that the second part that was also read is Section 11771 of the Revised Laws of Hawaii. That deals with vagrants, beggars, pickpockets, loitering, dissolute persons, prowlers, common prostitutes, drunkards, disorderly persons; penalty.

Judge Biggs: Mrs. Bouslog, did the witness say that [113] portion was also read?

Mrs. Bouslog: Yes, he has indicated.

(Testimony of Benjamin Awana.)

Q. (By Judge Biggs): The part which your counsel has just read to you, Mr. Awana, was also read to you on the date of this incident?

Mrs. Bouslog: Your Honor misunderstood. That is the title of the statute. The part read was indicated by a red mark.

Judge Biggs: I merely want to get the record straight, Mrs. Bouslog.

Q. (By Mrs. Bouslog): Was this part read?

Judge Biggs: Mark it in some way on the document.

Q. Was the part in red on this document, the part that was read to you by the police officers that morning? A. Yes.

Judge Biggs: Very well, let it be marked in evidence.

Mrs. Bouslog: For the Court's information, here is another part of the statute that deals with rioting and unlawful assembly.

Judge Biggs: Let it be marked Plaintiff's Exhibit Number 11.

(Thereupon, the document referred to was marked Plaintiff's Exhibit No. 11 and was received in evidence.)

PLAINTIFF'S EXHIBIT NO. 11

Session Laws of Hawaii 1945

Section 11751. Trespass, Penalty.

Whoever, without right, enters or remains in or upon the dwelling house, buildings or improved or

(Testimony of Benjamin Awana.)

cultivated lands of another or the land of another about or near any buildings used for dwelling purposes, after having been forbidden to do so by the person who has lawful control of such premises, either directly or by notice posted thereon, and any person who wilfully tears down or defaces any such notice, shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not more than two hundred fifty dollars or by imprisonment of not more than three months, or by both fine and imprisonment;

Provided, however, that entry upon or passing along or over established and well defined roadways, pathways or trails leading to public beaches over government lands, whether or not under lease to private persons, shall not of itself constitute the offense of trespass, and anyone entering upon or passing along or over any such roadway, pathway or trail on his way to or from a public beach shall be liable only for such actual physical damage as he may cause in so doing.

Section 11771. Vagrants; Beggars; Pickpockets, etc.; Loitering; Dissolute Persons; Kahunas; Prowlers; Tramps; Fortune Tellers; Common Prostitutes; Drunkards; Disorderly Persons, etc.; Penalty.

Every person without visible means of living who has the physical ability to work and who does not seek employment nor labor when employment is

(Testimony of Benjamin Awana.)

offered him; or every beggar who solicits alms repeatedly or causes any child so to do, or every person who roams about from place to place without any lawful business; every person who has in his possession without lawful excuse (the proof of which excuse shall be upon such person) any false or skeleton key or any implement of house breaking; or every person who is found without lawful excuse (the proof of which excuse shall be upon such person) in or upon the dwelling house, building, yard, or the land of another about or near any building used for dwelling purposes, or on board any vessel; or every person who wanders about the streets at late or unusual hours of the night, without any visible or lawful business; or every person who lodges in any barn, shed, shop, outhouse, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to the possession thereof; or every person who is dangerous or disorderly by reason of his being a rioter, disturber of the peace, going offensively armed, uttering menaces or threatening speeches or otherwise, is a vagrant and shall be punished by a fine of not less than ten dollars nor more than five hundred dollars or by imprisonment for not more than one year, or by both fine and imprisonment.

Admitted.

(Testimony of Benjamin Awana.)

Q. (By Mrs. Bouslog): On October 16, 1946, how many days had [114] the sugar strike been going on? A. Oh, about 45 days, I imagine.

Q. It began on the first day of September?

A. Yes.

Q. How many people were employed by the Maui Agriculture Company at Paia, or were employed at that time? A. About 1,800.

Judge Biggs: Just a moment. Please read the question and answer.

(The question and answer were read by the reporter.)

Q. How many people live in Paia?

A. About 3,000.

Q. Do the people who live in Paia represent approximately the employees of the Maui Agriculture Company and their families? A. Yes.

Q. Is Paia what you might call a company town?

A. Yes.

Q. Is the road that runs out in front of the Maui Agriculture Company mill a public or private road? A. It is a public road?

Q. How wide is that public road?

A. 45 feet.

Q. At the time when the picket line was picketing on the morning of October 16, was it picketing on the public road? A. On the public road.

Q. Did the picket line when it was moving, constitute an obstruction to traffic? A. No.

Q. Now, you say this was the 46th day of the

(Testimony of Benjamin Awana.)

strike. Had there been picketing at the Maui Agriculture Company from the first day of September until October 16th? A. Yes.

Q. Had the police at any time ever indicated that there was anything wrong with that picketing or objected to the presence of the pickets there?

A. Not to my knowledge.

Q. How many pickets, approximately, had been picketing this plant since the first day of September?

A. Oh, some days we have about 500, and some days about 1,000; some days 2,000 and so on.

Q. But you had had no difficulty with the police officers up to that time? A. No.

Q. Had there been any arrest for any picketing activities on the picket line at Paia in that 45 day period? A. I think one.

Q. Do you know, do you recall who that was?

A. A fellow by the name of George Ferrera.

Q. Do you know what happened? What was he charged with?

A. Assault and battery, I think. [116]

Q. And did he serve on the picket line after that incident happened?

A. No, after that incident he was thrown in the soup kitchen.

Q. You mean by that he was assigned to other strike activity? A. Making chow.

Q. Instead of on the picket line?

A. Yes, instead of the picket line.

(Testimony of Benjamin Awana.)

Q. When were you arrested after this incident happened on the 16th of October? When were you arrested?

A. I was arrested about nine o'clock in the morning; I think it was on a Saturday. I think it was the 17th.

Q. In other words, a whole day intervened?

A. Yes.

Q. From that day, the next day and the next day after that. How much bail were you required to put up? A. $1,000.

Judge Biggs: I don't think it is quite clear as to the length of time between the witness' arrest and the disturbance. Will you clear that up, please?

Mrs. Bouslog: Yes, your Honor.

Q. What was the time that the incident was over on October the 16th? What time was the incident pau? A. Oh, just about two minutes after.

Q. Well, what time in the morning was that?

A. A little before seven, I think. [117]

Q. What happened the rest of that day? Did the picketing activities continue?

A. They continued to picket.

Q. What happened the next day?

A. We still continued to picket.

Q. And when were you arrested? Were you arrested the next day? I think the record will——

Judge Biggs: That is the third day?

Mrs. Bouslog: Yes, the third day.

(Testimony of Benjamin Awana.)

Judge Biggs: Well, the record can be corrected. I had forgotten you had stipulated.

Mrs. Bouslog: I don't believe we have any record but I believe Mr. Crockett will stipulate it was on the 17th that the 79 people were arrested. Can you stipulate to that, Mr Crockett?

Judge Biggs: That is the day after the incident.

Mrs. Bouslog: I know. I am sorry. I am really confused. I was thinking of another incident to which we will refer in a few minutes.

Judge Metzger: Haven't you got the record of the arrest there?

Mrs. Bouslog: I have, your Honor, only the original indictment, but Mr. Crockett has the information here.

Judge Biggs: Can you enlighten the Court?

Mr. Crockett: I believe the complaint was sworn to [118] on the 19th before the District Magistrate, and the arrests were made a day or two after that. Some of them were picked up at one time.

Judge Biggs: That is fairly close. Will you accept that?

Mrs. Bouslog: Yes.

Judge Biggs: Very well.

Q. (By Mrs. Bouslog): Mr. Awana, do you know of your own knowledge whether or not—after you were arrested and you were taken down to the police station, what happened then?

A. Oh, we were held for questioning.

Q. How long were you held?

(Testimony of Benjamin Awana.)

A. Well, about five or six hours.

Q. How many people was that?

A. Roughly about 50.

Q. And then you were charged with unlawful assembly and riot by the police, is that correct?

A. Yes.

Q. Did you ever have a preliminary hearing on that, or did you waive the preliminary hearing?

A. We waived it, I think.

Q. And were you subsequently indicted by the grand jury of Maui County? A. Yes.

Mrs. Bouslog: I wonder if I may have the exhibit. [119] Your Honor, I have a copy to substitute for that one. This is the one I asked for permission to substitute. This is the substituted copy.

Judge Biggs: Would you mark the new copy, Mr. Clerk? Plaintiff's Exhibit 9.

(Thereupon the document was marked Plaintiff's Exhibit No. 9.)

[Exhibit 9 set out on pages 1240 to 1247.]

Q. (By Mrs. Bouslog): Is this the original indictment returned against you by the grand jury of Maui County? A. Yes.

Q. Will you look at those names on there, and will you say whether you know of your own knowledge that any of those names of persons were not present in front of the Maui Agriculture Company on that morning? A. Yes.

(Testimony of Benjamin Awana.)

Q. Yes, will you indicate which ones you know were not present?

A. Tomita was sick in bed. Hitoshi Sera was our chief cook in our soup kitchen. Johnny Nishimura was sick in bed. Frank Matsui was working that day. He is a utility worker, power plant operator turbine operator.

Q. You mean that during the course of the strike with permission, certain of the union members were permitted to work?

A. Yes, we furnished power and water.

Q. For community services? A. Yes. [120]

Q. Did any other employees of the company work during the strike with the sanction of the union?

A. The store departments, the store and the power and the one locomotive. We had to keep going to shift the food around.

Q. In other words, the union furnished people to keep the community services running?

A. Yes, and fuel was also furnished.

Judge Biggs: What was also furnished?

Mrs. Bouslog: Fuel.

The Witness: Fuel.

Judge Biggs: Fuel, thank you. Are you offering this indictment?

Mrs. Bouslog: It is already in evidence.

Judge Biggs: Yes, it is already in.

Mrs. Bouslog: Exhibit 9. No further questions.

Judge Biggs: I think we had better take a recess

(Testimony of Benjamin Awana.)

before the cross-examination begins. The Court will stand in recess for about five minutes.

(Recess.) [121]

Q. (By Mr. Crockett): Mr. Awana, on the date that this incident occurred, what was your official position with the pickets on that occasion?

A. Just another picket.

Q. Weren't you kind of in charge of the picketing? A. No, sir.

Q. Some of your pickets had arm bands on, didn't they?

A. They were in charge of the line.

Q. What did you call those men?

A. Oh, picket captains.

Q. In other words, one group of men were marching in the line and then the picket captains walked alongside, to keep them in line and to keep them moving? A. To keep them moving.

Q. Weren't you in charge of the picket captains? A. No, sir.

Q. Who was in charge of the picket captains?

A. Well, we had the—a chief of police.

Q. Who was that?

A. A man by the name of Louie Roman.

Q. There was also a man by the name of Levi Kealoha there, wasn't he? A. Yes.

Q. And one by the name of Kahawanui, I believe? A. How does the name go? [122]

Q. Benjamin Kahawanui.

A. Do you mean Levi's friend?

(Testimony of Benjamin Awana.)

Q. I really don't know whether he was or not.

A. I know Levi Kealoha had a friend and his name was Ben.

Q. Was Levi an employee of the plantation?

A. I don't think so.

Q. And this friend you refer to as Ben, was he an employee of the plantation?

A. I don't think so.

Q. Was there also a man by the name of Ricardo Baldoza? A. Yes.

Q. Was he an employee of the plantation?

A. No.

Q. About how many men would you say were in line when you got there; not when you got there, but about 6:30 a.m.?

A. I imagine around 200.

Q. Were those men all from Paia or were there some from Puunene and Kahului?

A. To my knowledge, all from Paia.

Q. What were they doing between 6:30 and 7?

A. Picketing.

Q. And by picketing, just specifically how were they carrying it on?

A. Oh, they were walking around, singing scab song, chewing the fat. [123]

Q. On which side of the road were they walking?

A. Going towards Makawao, which would be on the right-hand side of the road.

Q. That would be the side where the mill is?

(Testimony of Benjamin Awana.)

A. Yes.

Q. Was this a picket line or were they back and forth indiscriminately?

A. It was more of a circle; they were more in a circle like.

Q. That is, walking in practically a continuous circle? A. Yes.

Q. Where this circle turned around, on the Makawao side, to where the men turned and reversed their direction on the lower Paia side, about how much of a distance was that?

A. Oh, I would say about 150 feet.

Q. When they began was it more or less in single file or double file or three abreast, or how was that? A. Single.

Q. Single file. That is, at that time, about 6:30, isn't it? A. Yes.

Q. Before this incident? A. Yes.

Q. Were you present or did you see these boys whom you referred to as "scabs" talking to Freitas?

A. I saw the boys talking to the police officers; whether Freitas or somebody else, I don't know, I couldn't say. [124]

Q. Did you see Freitas also talking with Levi and his friend Ben?

A. I can't recall that.

Q. Which one of the officers was it that tried to take the men through the line?

A. Captain Long.

Mrs. Bouslog: I think that answer should be

(Testimony of Benjamin Awana.)

stricken because it calls for—I will withdraw the objection.

Judge Biggs: I think it is a permissible question, within the scope of the cross-examination.

Was the question answered?

(The answer was read by the reporter.)

Judge Biggs: Thank you.

Q. (By Mr. Crockett): I believe you testified that the incident happened about 7 o'clock, when the whistle blew, is that correct?

A. A little before 7.

Q. And just immediately before that the five men were over on the side of the road?

A. Yes. Sitting right on the intersection, on the crossing, where the road enters to the warehouse of the store.

Q. At that time was the line still moving just in single file, one or two abreast, or had it ganged up in any way?

A. Our line was still moving.

Q. Showing you the picture which has been offered in evidence as Defendants' Exhibit 2-A; at what time would you say [125] that that picture was taken? What does that picture represent? At about what time would you say it was taken?

A. Right after Mr. Freitas—a couple of minutes after Mr. Freitas read the law to us, I think.

Q. Does that picture show the line moving or does that show the line stopped?

A. On the Makawao side it shows the men are

(Testimony of Benjamin Awana.)

still in formation. I think that this part of the picture, we were going to get back into formation and go round and round.

Q. And does that picture also show the persons you refer to as "scabs" approaching?

A. Yes; five of them.

Q. (By Judge Metzger): Where?

A. There (indicating).

Q. (By Mr. Crockett): Did those men say anything to you or tell you what they wanted to do?

A. No, sir.

Q. Did they ask you to let them go through the line? A. No, sir.

Q. Did Captain Long say anything to you?

A. Yes.

Q. What did Captain Long say?

A. He said, "Ben, the boys want to go to work."

Q. What did you say?

A. Before I had a chance to reply, they—before I had a [126] chance—That is, I wanted to tell them to respect our picket line, but I didn't have that chance, and this No. 1 "scab" in the front just pushed me, that is all, and we pushed back.

Q. Did you say anything to them before this pushing occurred?

A. I don't remember saying anything to them; I didn't have the chance to say anything.

Q. Do you recall telling "scab" Souza, as you call him, or do you recall "scab" Souza saying to you that he wanted to go through? A. No.

(Testimony of Benjamin Awana.)

Q. And isn't it a fact that you made the answer "Try and do it"? A. No, sir.

Q. How were you standing at the time these men tried to pass by you?

A. How was I standing?

Q. Yes. Would you mind showing the Court?

A. Just as the picture shows. Whoever took the picture.

Q. Will you indicate to the Court?

(Witness indicates.)

With your arms down? A. Yes, sir.

Q. Isn't it a fact you had your arms outstretched?

A. But I had my arms outstretched because of the push. [127]

Q. Who was standing alongside of you?

A. I can't remember.

Q. Do you remember a man by the name of Shimano? A. I know who he is.

Q. Isn't it a fact he was standing alongside of you? A. I don't know.

Q. Do you remember a man by the name of Ito? A. I know who he is.

Q. Isn't it a fact he was standing on the other side of you? A. Not that I know of.

Q. And when these men approached, isn't it a fact that all of you got together in such a way that they couldn't pass you? A. No, sir.

Q. Did you make any move to allow them to pass? A. I was in the picket line.

(Testimony of Benjamin Awana.)

Q. How close were those men standing alongside of you? A. Oh.

Q. Practically shoulder to shoulder?

A. Not quite.

Q. About how much space between them?

A. I can't say; I wasn't looking behind.

Q. Was there enough space between you and the man next to you to allow a person to pass by you without coming in contact with you?

A. I can't say.

Q. Why can't you say? [128]

A. Because I wasn't looking behind.

Q. I am talking about the people alongside of you, not the people behind you.

A. There was nobody alongside of me.

Q. You were in front, by yourself?

A. Well, I was a little in front of them.

Q. I see. Now, do you know whether any of those five boys tried to go to work on any previous occasion?

A. Oh, I just heard about it.

Q. When did they try to go to work?

A. I don't remember.

Q. Wasn't it the morning before that?

A. Not that I know of.

Q. You were present at all times up there, weren't you, Mr. Awana?

A. Off and on. Sometimes I got to do my duty and change the boys.

Q. But you were in Paia district all that time?

(Testimony of Benjamin Awana.)

A. My share of the time; a lot of times I was in negotiations.

Q. But you don't know whether or not any of the men tried to go to work on the previous morning? A. No.

Q. On the morning after the 16th was there another picket line formed in the same locality?

Mrs. Bouslog: I object as not within the proper scope [129] of cross-examination. I believe this plaintiff's testimony stopped at the time of the incident.

Judge Biggs: To what is this question directed?

Mr. Crockett: It is directed to the proposition which has been raised by the plaintiffs that these people were there to picket, and we wish to show that they continued picketing, not only on this occasion but on more than one occasion thereafter.

Judge Biggs: Objection overruled. Read the question.

(The question was read by the reporter.)

Judge Biggs: Answer.

A. I am not sure.

Q. (By Mr. Crockett): Isn't it a fact, Mr. Awana, that you came and had a talk with me about it a few days after, and told me there was a picket line up there on that morning, and you called it a parade?

A. Wasn't it you called me to see you?

Q. It was in my office. We were talking it over.

(Testimony of Benjamin Awana.)

A. I was called to see Mr. Lane, the chief of police on Maui.

Q. What I am getting at is: Wasn't there a picket line or parade on the morning after the 16th? A. I can't say.

Q. You didn't tell me that?

A. Maybe I told you there was a picket line, but we had taken different posts. [130]

Q. How about from the 16th right down to the termination of the strike; did you continue to maintain your picket line up at Paia?

A. After the order was issued we were supposed to post three pickets on each post, and that is what we did.

Q. The order you refer to was what, the injunction? A. Yes.

Q. You continued to picket under the terms of the injunction until the end of the strike?

A. Yes.

Q. What was this incident you said for which Ferreira was arrested; how did that occur?

A. To my knowledge, the "scab" was walking down the road and wanted to work. There was a little harsh words and maybe—I didn't see this now at the time.

Judge Biggs: Let the witness testify from his own knowledge, please. There are exceptions to the hearsay rule, but can't you prove this incident, if it is desirable to prove it, it is apparent to me that it is entirely what someone has told him. Do you want that?

(Testimony of Benjamin Awana.)

Mr. Crockett: No, if the Court please. It was brought in evidence——

Judge Biggs: I know. It is a proper subject of cross-examination, Mr. Crockett, the Court will agree, but at the same time we want evidence——

Mr. Crockett (Interrupting): May I ask just this question?

Q. Was that in connection with picketing or was that just an incident that occurred during the strike?

A. I believe it was in picketing.

Q. Were there any other arrests made of any persons in connection with the picketing?

A. Not that I can recall.

Mr. Crockett: That is all, if the Court please.

Judge Biggs: Anything more on rebuttal? Anything on rebuttal?

Mrs. Bouslog: No, your Honor. That is all.

Judge Biggs: That is all. Thank you.

(The witness was excused.)

Judge Biggs: Are you proposing to clear up the cross-examination of Mr. Sibolboro?

Mr. Crockett: We are ready to take that up at the present time.

Judge Biggs: Suppose we continue with that.

Mrs. Bouslog: That is all right. I have finished with my witnesses on the Kaumalapau incident.

Judge Biggs: Suppose we clear up the cross-examination. Is he there, Mrs. Bouslog? Mr. Sibolboro?

Mrs. Bouslog: I am very sorry, your Honor.

Judge Biggs: Of course, he didn't understand, but will you undertake to get him back again? [132]

Mrs. Bouslog: I will attempt to get him back; I will see if he is at the union's office.

Mr. Symonds: Yes.

Judge Biggs: I suppose Mr. Symonds understands that. We will go ahead with your next witness.

Mrs. Bouslog: Your Honors, I have finished with my witnesses in relation to the incident that occurred in the Kaumalapau indictment of the 1947 grand jury. There has been much reference to the question of what happened after the picketing, what happened afterwards, and I would like at this time to offer a copy of the transcript of the record in No. 11568 before the United States Circuit Court of Appeals for the Ninth Circuit, ILWU v. Cable A. Wirtz, where a writ of prohibition was applied for to the Supreme Court of the Territory on the grounds that Judge Wirtz had no jurisdiction to issue the order that was issued. And the connection in which I want to offer this transcript is that when the ex parte restraining order against picketing was asked for, the court limited picketing on the part of the employees to three at every entrance, because he said he was mindful of the unlawful assembly and riot statute.

Judge Biggs: Is there objection to the offer?

Miss Lewis: Yes. We object as incompetent, irrelevant, and immaterial, if the Court please.

We are going much too far afield. If we are going into that injunction hearing, why [133] shouldn't we go into the injunctions that Judge Moore issued and that Judge Rice issued? They have all been reviewed by Judge McLaughlin. Those records are in court. Perhaps we should incorporate all those records in here. I think we are going much too far afield.

Judge Biggs: We don't want the necessity of employing special means of transportation for taking these transcripts to the mainland.

Mrs. Bouslog: I think Miss Lewis misunderstood the purpose. It is the plaintiffs' contention that the unlawful assembly statute hangs like a threat over the whole organization of the union, and that this is another illustration of the way in which the statute is used even for justification for limiting peaceful picketing to three.

Judge Biggs: I am not sure of the necessity for putting those in evidence. It is a public document, isn't it?

Mrs. Bouslog: Yes; it is a part of the record. It is attached to Judge Wirtz's return to the order to show cause before the Supreme Court of the Territory. Plaintiffs offer his decision in the equity file in the Second Circuit Court.

Judge Biggs: You offer them simply to show——

Mrs. Bouslog: I offer his decision simply to show that the unlawful assembly statute was used to justify the limiting of picketing in an agricultural strike, involving thousands of people, to

three, simply because the court felt [134] that anything over three was unlawful assembly or riot or might lead to such.

Judge Biggs: You have already shown that the injunction limited the assembly to three.

Mrs. Bouslog: The judge made the statement——

Judge Biggs: Suppose he was wong. Are we bound by his state of mind?

Mrs. Bouslog: No, your Honor. But as long as it is used as justification for peaceful picketing, it is another way in which the citizens——

Judge Biggs: Isn't that a matter for argument, Mrs. Bouslog?

Mrs. Bouslog: All right.

Judge Biggs: I think it is a matter for argument.

Mrs. Bouslog: All right, your Honor.

Judge Biggs: Will you call your next witness?

Mrs. Bouslog: My next witness, the next, your Honors, we will turn to Case No. 828.

Judge Biggs: Yes.

Mrs. Bouslog: The Barbosa and Makekau incidents. I will first call Pedro De la Cruz.

PEDRO DE LA CRUZ

was called as a witness by and on behalf of the plaintiffs, and being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please? [135]

A. Pedro De la Cruz.

Q. Where do you live?

Judge Biggs: Do you spell it D-e-l-a C-r-u-z?

The Witness: De la Cruz.

Judge Biggs: Thank you.

Q. (By Mrs. Bouslog): Where do you live?

A. Lanai City, Lanai.

Q. How long have you lived in Lanai?

A. Up to this time about 14 years.

Q. By whom were you employed on Lanai?

A. Hawaiian Pineapple Company.

Q. Are you now employed by Hawaiian Pineapple Company?

A. No; I was discharged last year.

Q. What time last year were you discharged?

A. I think it is on the 13th of March, 1947.

Q. Are you a member of the union?

A. Yes. A full-time officer now.

Q. What office do you hold with the union?

A. I am president of the unit, Local 15, and the business agent of the unit and the vice-president of the local.

Q. Were you president of the union at the time

(Testimony of Pedro De la Cruz.)

you were discharged by the Hawaiian Pineapple Company? A. Yes.

Q. What was the reason for your discharge?

A. They claimed that my work was unsatisfactory. [136]

Q. What job did you have with the company at the time you were discharged?

A. I was section foreman.

Q. What was your salary or your wage?

A. I was earning $400 a month.

Q. Had there ever been an complaints against your work up to that time?

A. No; not that I know of.

Q. Did this charge—Did this discharge take place during the current pineapple wage dispute which culminated in the strike of July 10?

A. Yes.

Q. Did you hold any other office in the community of Lanai besides being the union president? At that time?

A. I was and am still president of the Filipino Communty in that place, and I was once president of the Community Association that is sponsored by the company. During the war I was the commander of all the organized forces, that is volunteers, which was also a part of the Armed Forces of the United States of America.

Q. Now, you were president of the union at the time of the strike, is that correct, on the Island of Lanai? A. Yes.

(Testimony of Pedro De la Cruz.)

Q. Were there many of the union members arrested during the strke by the police officers on Lanai? [137]

A. Yes; I think close to 60.

Q. Did you have occasion to keep track of the people who were arrested? A. Yes.

Q. Did you put up the bail or take care of the matter of bail for them when they were arrested?

A. I bailed them out. I bailed out all those that were arrested except two.

Q. Now, calling your attention, Mr. De la Cruz, to the time when Abraham Makekau and four others were arrested and charged with unlawful assembly; did you bail those people out?

A. Yes. After some effort to raise the money I bailed them out.

Q. How much was their bail?

A. It was $1,000 apiece.

Q. $5,000? A. $1,000.

Judge Biggs: $1,000 apiece.

A. $1,000 apiece.

Q. (By Mrs. Bouslog): How much time did you have to raise that money?

Judge Biggs: I don't understand what you mean by that question. What do you mean, Mrs. Bouslog?

Mrs. Bouslog: The Island of Lanai has very scant facilities for keeping people in detention and all people who [138] are arrested there are immediately enplaned for the Island of Maui.

(Testimony of Pedro De la Cruz.)

Judge Biggs: I see the point. Very well. The question has not been answered.

How much time did you have to raise the bail?

A. Well, I didn't go around and ask for money because I didn't know when or if I could bail them out or not, because the chief of police, when I heard that those people were arrested I saw the chief of police and he told me I cannot talk with them because they were under investigation. So the next morning I visited the chief of police again, and he told me that at six o'clock in the afternoon, if I cannot produce their bail, they will be taken to Maui, and that I had less than an hour to raise the money. I went back to the union office and asked for the union members to put up that sum of money, and before I raised that one of the union members came up with $3,000, so I went up and bailed them out. I went to the police station and bailed them out.

Q. Was that in connection with the Barbosa group or with the Makekau group of people?

A. The Makekau group.

Q. Did you bail out the eleven people who were arrested at the same time that Diego Barbosa was arrested? A. Yes.

Q. How much bail? Approximately how much bail was charged [139] in that case, do you recall?

A. Around $10,000 to $11,000.

Q. (By Judge Biggs): How much is that per individual?

(Testimony of Pedro De la Cruz.)

A. Some were $1,000 apiece. I recall two of them was $500 apiece, I think.

Q. (By Mrs. Bouslog): Mr. De la Cruz, perhaps if you will tell the Court how much money you were forced to raise for people on the Island of Lanai during the five-day pineapple dispute it will give the Court the picture.

A. I am not sure of that, but I was holding a $7,000 check with me at that time, but when I went to the bank, the bank manager told me that I couldn't cash that check because our local account was not sent to the branch yet, so I could not cash the $7,000 check, and then I had to ask the boys to borrow it from the merchants in the city, from the business men. So we produced between $7,000 and $10,000, I think, and then I bailed out these men.

Q. Why did you say the bank wouldn't cash the check?

A. The bank manager told me that our local's account was not in that branch yet. I would like to explain that our local's money or account is in Honolulu, our local office in Honolulu, so maybe that mean when they sent that $7,000 check the Bank in Honolulu didn't notify the bank in Lanai.

Judge Biggs: It is pretty remote. I think it is very remote. Let it stand, but do not pursue the question further.

Q. (By Mrs. Bouslog): How many people live in Lanai City? [140]

(Testimony of Pedro De la Cruz.)

A. I wasn't interested in politics because I couldn't participate.

Q. I say, How many people live in Lanai City?

A. Oh. When I was there in 1936 I used to hear from the "Big Shots" that they got about 3800 people. That was in 1936.

Q. Those 3800 people, do most of those people work for the Hawaiian Pineapple Company or their families?

A. Most of them are working and most of them that were not working were dependents of the workingmen.

Q. In your opinion did the large number of arrests on the Island of Lanai during the pineapple strike have any effect on the strike?

Mr. Crockett: To which we object, if the Court please, as calling for a conclusion. I don't think he is competent to give his conclusion.

Judge Biggs: Overruled. I think he may testify as to his opinion on that matter. Objection overruled. Answer the question.

The Witness: I beg your pardon.

Q. (By Mrs. Bouslog): In your opinion did the large number of arrests for unlawful assembly on the Island of Lanai have any effect on the pineapple strike?

Judge Biggs: Do you think this witness can testify competently to the arrests for unlawful assembly, as distinguished from any other arrests?

Q. (By Mrs. Bouslog): All right. Just the ar-

(Testimony of Pedro De la Cruz.)

rests then. [141] Did the arrests during the strike have any effect?

A. Yes. Especially when I told my membership that the officers told me that those people were arrested on riot and unlawful assembly, with a penalty of 20 years. Of course my membership was very much scared.

Q. Because of the 20-year penalty they were frightened?

Judge Biggs: Just a minute, please. Proceed. The witness has answered the question.

Q. (By Mrs. Bouslog): Now, did it have any effect? A. Yes.

Q. Did the loss of the pineapple strike have any effect on the membership on Lanai?

Mr. Crockett: To which we object, if the Court please. How could he testify as to that? The witness might say it did or didn't. It is purely speculative and calling for a conclusion. I submit it is not within his power to form an intelligent opinion upon that subject. It is too remote.

Judge Biggs: He has testified that he has had close connection with the union. He has been an officer thereof. And I think he may testify, state his opinion, for whatever it is worth, subject to a motion to strike. Same ruling. The objection is overruled.

The Witness: I beg your pardon.

Mrs. Bouslog: I will repeat the question.

Q. (By Mrs. Bouslog): Did the loss of the

(Testimony of Pedro De la Cruz.)

pineapple strike have any effect on the number of members in Lanai? [142]

A. No, I don't think so.

Q. How many members were there at the beginning of the strike?

Judge Biggs: The witness has answered the question.

Mrs. Bouslog: Yes.

Judge Biggs: With a "No." He says, "No effect."

Mrs. Bouslog: I am asking how many members there were before, at the beginning.

Judge Biggs: I think you are taking it too far. I suppose you propose to find the difference in number before and after.

Mrs. Bouslog: That is correct.

Judge Biggs: The witness has stated there was no effect in his opinion.

Mrs. Bouslog: I think the witness didn't understand the question.

Judge Biggs: You may repeat the question to him.

Q. (By Mrs. Bouslog): Mr. De la Cruz, by the fact that no wage increases were gotten for——

Judge Biggs: There is your question as testified to before. Did or didn't the loss of the strike have an effect on the membership of the union?

Q. (By Mrs. Bouslog): Did or didn't the loss of the pineapple strike have an effect upon the union on Lanai?

(Testimony of Pedro De la Cruz.)

A. I beg your pardon. I thought it was the loss of something else. The loss of our cause had a great effect on our [143] membership.

Q. What is the difference in membership between the time before the strike and at present?

A. Before the strike we had about 1300 members.

Q. How many members do you have now?

A. 860 to 900.

Q. Are you familiar with the house rules of the Hawaiian Pineapple Company on the Island of Lanai? A. Yes.

Mrs. Bouslog: Mr. Crockett, this is a document that was furnished to us. May the record show that I have handed a document marked "Causes for discipline or discharge," stamped "Hawaiian Pineapple Company," attached to which is a document entitled "Safety Rules. Lanai Plantation Company," because there is a reference to the safety rules on the first part, in the rules themselves, so that this is part of the same document. For the purposes of this case we are interested in rule No. 6 and rule No. 12.

Judge Biggs: This document may be admitted, subject to the same reservation as to relevancy.

Mr. Crockett: That is right.

Judge Biggs: Very well. Let it be marked Plaintiffs' Exhibit No. 12.

(The document referred to was marked Plaintiffs' Exhibit No. 12, for identification, and was received in evidence.) [144]

(Testimony of Pedro De la Cruz.)

PLAINTIFF'S EXHIBIT NO. 12

Causes for Discipline or Discharge

1. Fighting or attempting bodily injury to another insofar as such actions may interfere with working relationships.

2. Stealing, making fraudulent records, or malicious mischief resulting in the loss, injury or destruction of property belonging to other employees or the Company.

3. Insubordination, refusal or failure to perform work assigned, or use of profane or abusive language when used maliciously against another employee and/or when it constitutes insubordination.

4. Falsifying or refusing to give testimony when accidents are being investigated; making false statements when filling out application blanks for employment and/or making false statements when physical examinations are being made.

5. Introduction, possession or use on the job of habit forming drugs or intoxicating liquors, or reporting for duty under the influence of habit forming drugs or intoxicating liquors.

6. Conduct which violates common decency or morality.

7. Offering or receiving money or gifts in exchange for a job, better working place, or any change in working conditions.

8. Leaving your work without notice to and permission from immediate supervisor, except in case of emergency.

(Testimony of Pedro De la Cruz.)

9. Harboring a disease or condition which may endanger fellow employees, the Company's product or others.

10. Violation of posted safety rules.

11. Smoking or having open lights or fires within prescribed limits where such practice is forbidden.

12. Unexcused absences except in cases of emergencies or in case of sickness when notice must be given as soon as possible. During any one (1) month period any unexcused absences shall be treated as follows: The first offense may result in a warning, the second offense may result in a layoff or discharge. An employee who fails to report to work for five (5) consecutive working days without proper authorization and notification shall be dropped from the roles.

13. Sleeping on duty.

14. Gambling on Company premises at the Factory and/or in work areas during working hours on the Plantations.

15. Repeated tardiness. Tardiness during any one (1) month period will be treated as follows: The first occasion shall result in a warning and the second occasion may result in either layoff or discharge.

In the absence of special circumstances, it is understood that the above house rules will be limited to activities on the premises during working hours.

HAWAIIAN PINEAPPLE CO., LTD.

Admitted.

(Testimony of Pedro De la Cruz.)

Q. (By Mrs. Bouslog): Mr. De la Cruz, will you look at that and see if it is, to your knowledge, the present house rules or rather the house rules that were in effect at the time of the pineapple strike?

A. Yes, to the best of my knowledge.

Mrs. Bouslog: You may cross-examine, Mr. Crockett.

Cross-Examination

By Mr. Crockett:

Q. How much bond did you say you put up in the Makekau matter?

A. That was between $3,000 and $6,000. I am not sure of the exact amount, but between $3,000 and $6,000.

Q. That is, there were five defendants in that case, were there not?

A. There were five defendants.

Q. Bond set at $1,000 each?

A. That would be $5,000.

Q. And in the other case, Barbosa, there were eleven defendants, were there not?

A. Yes; eleven.

Q. And isn't it a fact that the bond was set at $1,000 only in the case of Barbosa and John Maile?

A. Yes. I recollect getting two 500's and the rest 250, I think.

Q. Two 500's? [145] A. Yes.

Q. I think there were three. Victor Degamo was $500. A. Barney.

(Testimony of Pedro De la Cruz.)

Q. And James Aikala, $500, is that right?

A. Yes. To the best of my knowledge, two $1,000, two $500, and the rest were $250.

Q. You were not present at the time of the incidents at the wharf, at the Kaumalapau Wharf, were you? A. No.

Q. Were you present at the incident which occurred in which Makekau and the others were charged? A. No.

Mr. Crockett: That is all.

Mrs. Bouslog: That is all.

(The witness was excused.)

Judge Biggs: Call your next witness, please.

Mrs. Bouslog: Mr. Crockett, will you stipulate that the record may show that Mr. De la Cruz is a Filipino?

Mr. Crockett: Yes.

Judge Biggs: You do so stipulate?

Mr. Crockett: I do so stipulate. I believe it is in the record.

Mrs. Bouslog: Your Honor, I believe it is in the record.

Judge Biggs: It is in obliquely that he is head of the Filipino Association. [146]

Mrs. Bouslog: Yes.

NOBORU HONDA

was called as a witness by and on behalf of the plaintiffs, and being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your full name, please?

A. Noboru Honda.

Judge Biggs: Will you keep your voice up, please? It is rather hard to hear in this room.

Q. (By Mrs. Bouslog): Will you try to speak up so we can all hear, and I will try to speak so you can hear me Where do you live, Mr. Honda?

A. I live in Lanai City.

Q. How long have you lived in Lanai City?

A. For about 15 years.

Q. By whom are you employed?

A. I beg your pardon?

Q. Whom do you work for?

A. I work for Hawaiian Pineapple Company.

Q. Immediately before the pineapple strike, were you working for the Hawaiian Pineapple Company? A. Yes, I was.

Q. Are you a member of the International Longshoremen's & Warehousemen's Union?

A. I am. [147]

Q. How long have you been a member of the union? A. For about two years.

Q. Were you out on strike from July 10 to July 15, 1947? A. Yes, I was.

(Testimony of Noboru Honda.)

Q. Were you arrested during the course of that strike? A. Yes, I was.

Q. When were you arrested?

A. I don't recall the exact date when I was arrested.

Mrs. Bouslog: I think the record shows, your Honor.

Judge Biggs: Can you stipulate it?

Mrs. Bouslog: It is stipulated it was on August 1.

Judge Biggs: Right.

Mrs. Bouslog: Returnable before the district magistrate on August 6, continued from August 6 to August 22, and then again to August 28, the preliminary hearing, which extended for four days, the decision on whether to bind over for the grand jury being reached sometime in September.

Judge Biggs: Is that correct?

Mr. Crockett: That is correct, your Honor

Q. (By Mrs. Bouslog): What were you charged with in this complaint that was sworn out against you?

A. I was charged with inciting a riot or something like that.

Q. Was that what you might call the harbor incident? A. That is right. [148]

Q. Were you present at the time the harbor incident occurred? A. I was not.

Q. Were you down at the harbor at any time on the day the incident occurred?

(Testimony of Noboru Honda.)

A. Yes, I was.

Q. Will you tell the Court when you arrived at the harbor and what you did while you were down there?

A. During that time, the day of the incident, I got down at the harbor in the morning, I was picketing, and then I returned home, and I returned to the harbor again about ten minutes after the incident.

Q. By that time any trouble that there was was all over? A. Yes, it was.

Q. Was everything peaceful?

A. Yes, it was.

Q. How did you arrive from Lanai City at the harbor?

A. I arrived in a private car.

Q. By yourself?

A. No; with five other boys.

Q. You say this was approximately ten minutes after the incident happened?

A. It is not exact, but about ten minutes.

Q. Can you name the other people who were present in the car with you at that time? [149]

A. As far as my memory goes, I can remember, Usuoka Yamani.

Mr. Crockett: We can't hear you.

Judge Biggs: Please keep your voice up. Counsel for the Attorney General and his assistants are over there, and they have to hear too or they cannot operate. Keep your voice up.

(Testimony of Noboru Honda.)

A. Mitsuyuki. That is his first name.

Judge Biggs: Mrs. Bouslog, I don't want to limit you, but he states he was there with five other boys. Is it necessary that we have their names?

Mrs. Bouslog: It certainly is, your Honor, because all of these people are charged.

Judge Biggs: But you are not trying that case here.

Mrs. Bouslog: That is correct. But this is showing the clear deprivation of constitutional rights.

Judge Biggs: Yes, but what does the names of those other five——

Mrs. Bouslog: They are plaintiffs in this action.

Judge Biggs: They are plaintiffs?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: All right. Will you continue, please?

Q. (By Mrs. Bouslog): Can you give the first name again? After Mitsuyuki, what was the last name? A. Oyama.

Judge Biggs: Speak up, please.

A. Tomita Nobuteru. [150]

Q. (By Mrs. Bouslog): After you arrived approximately at the same time you arrived, did you see anyone else coming from Lanai City on the way down to the harbor? A. Yes, I did.

Q. Who did you see or what did you see?

A. I saw a truckload of men coming down, and then later on about two cars coming down.

(Testimony of Noboru Honda.)

Q. After the incident was over? A Yes.

Q. You don't recall who was in those cars?

A. I do not.

Mrs. Bouslog: You may cross-examine.

Judge Biggs: Cross-examination.

Cross-Examination

By Mr. Crockett:

Q. Mr. Honda, did you testify at the preliminary hearing had at Lanai City in this matter after you were arrested?

A. What do you mean by "testify;" I don't understand the question.

Q. Did you go on the witness stand and make any statement in court? A. I did not.

Q. How about Tomita; do you recall whether he made any statement to the court?

Judge Biggs: Must we have Tomita in here at this point?

Mr. Crockett: I will withdraw the question, if the [151] Court please No further questions.

Mrs. Bouslog: All right.

Judge Biggs: That is all.

(The witness was excused.)

KAZOICHI HASHIMOTO

a witness called by and on behalf of the plaintiffs, being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name and place of residence, please?

A. Kazoichi Hashimoto, Lanai City.

Q. Are you employed by Hawaiian Pineapple Company? A. Yes.

Judge Biggs: May we have his name for the record, please?

Mrs. Bouslog: I am very sorry, your Honor. Kazoichi Hashimoto.

Q. (By Judge Biggs): That is your name?

A. Kazoichi Hashimoto.

Q. How do you spell the last name?

A. H-a-s-h-i-m-o-t-o.

Judge Biggs: Thank you.

Q. (By Mrs. Bouslog): How long have you been employed by Hawaiian Pineapple Company?

A. A little *over years.*

Q. Are you a member of the union?

A. Yes.

Q. Did you go on strike at the time the union did, on July 10? A. Yes.

Q. What is your racial extraction?

A. Japanese.

Q. Are you a citizen? A. Yes.

Judge Biggs: Do you desire any stipulation as to the racial extraction of the last witness?

(Testimony of Kazoichi Hashimoto.)

Mrs. Bouslog: I believe it shows in the record, since he is a plaintiff, your Honor.

Judge Biggs: Very well. Pardon me.

Mrs. Bouslog: If the Court will permit me some shortcuts.

Judge Biggs: Go ahead. Yes. If the questions get too leading, we will expect Mr. Crockett to object.

Q. (By Mrs. Bouslog): You were charged with unlawful assembly and riot at the same time the 48 other people were charged?

A. Yes, I was.

Q. That was the incident at the harbor?

A. Yes.

Q. Will you tell the Court whether you were present at the [153] time this happened?

A. When that incident occurred, before the incident occurred I was sitting on the rail by the Manuwai, and when the incident occurred I walk up to the "kapu" line and I stood there, and when it was over I walked back.

Judge Biggs: The kapu line or white line, is that it?

Mrs. Bouslog: That is right.

Judge Biggs: The forbidden line. Kapu means forbidden, does it?

Mrs. Bouslog: Keep Out.

Judge Biggs: What about the Manuwai or the railing you were sitting on? Where is that? What does that mean?

(Testimony of Kazoichi Hashimoto.)

A. That is where the Hawaiian Pineapple Company has a small passenger boat, plying between Lanai and Maui.

Q. (By Mrs. Bouslog): You were sitting on the railing of the boat?

A. Yes. That is this side of the kapu line.

Q. Were you ever at any time during the incident inside the kapu line? A. No.

Q. Do you know any of the other plaintiffs who were charged with unlawful assembly and riot who were not there at the time, of your own knowledge?

A. Yes; a school boy.

Judge Biggs: Who? [154]

Mrs. Bouslog: A school boy.

Judge Biggs: Oh. A school boy.

Q. (By Mrs. Bouslog): Do you know of anyone else? A. Mitsui Shimizu.

Q. Mitsui is the first name and Shimizu is the last name. Where was Mitsui Shimizu at the time?

A. He was up at the hospital.

Mrs. Bouslog: You may cross-examine.

Q. (By Judge Biggs): The school boy, was that the same man that testified here this morning?

A. Yes.

Q. The second witness or third witness?

A. Yes.

Judge Biggs: Cross-examine.

Q. (By Mr. Crockett): Did you testify in district court on the preliminary hearing?

A. No.

(Testimony of Kazoichi Hashimoto.)

Mr. Crockett: That is all.

(The witness was excused.)

Judge Biggs: Next witness, please. [155]

MASAO GIMA

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please.

A. Masao Gima.

Q. Where do you live? A. Lanai City.

Q. By whom are you employed?

A. Hawaiian Pines.

Q. Are you a member of the union?

A. Yes.

Q. You went on strike with the union July 10th?

A. Yes.

Q. You were charged, along with 48 other people, for unlawful assembly and riot, because of a harbor incident? A. I was.

Q. Will you state to the court whether you were present at the time that took place?

A. I was not.

Q. You were not? A. No.

Q. Were you at the harbor at any time that day?

A. In the morning, 10 minutes after this happened. [156]

(Testimony of Masao Gima.)

Q. You came down to the harbor 10 minutes after this happened? A. Yes.

Q. Who did you come down with?

A. With (Fred Okura). In a car.

Q. Were there any other people with you?

A. Four or five of the boys.

Q. Were any of them defendants in the case?

A. I don't think so.

Cross-Examination

By Mr. Crockett:

Q. Did you testify in the district court at all?

A. No.

(Witness excused.)

HIROSHI OSHIRO

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name for the record, please. A. Hiroshi Oshiro. (Spells.)

Q. In the course of the transcript before the district magistrate, what is your nickname by which you are generally known? A. Molokai.

Q. What is that name? [157]

A. That is the name of the island.

Q. You were charged with unlawful assembly

(Testimony of Hiroshi Oshiro.)

and riot at the time of the incident down at the harbor? A. Yes, that's right.

Q. Were you present at that time?

A. That's right.

Q. Did you ever cross the kapu line while the trouble was going on? A. I did not.

Mrs. Bouslog: Mr. Crockett, I haven't had made available to me yet the pictures in the book you had identifying the exhibits you stipulated into the record. May I borrow your pictures for a moment?

Mr. Crockett: I might have pictures which you objected to.

Judge Biggs: Can you get the other book for her?

Q. You were present at the preliminary hearing, is that correct? A. Yes, I was.

Q. Were you identified in any pictures except in the peaceful pictures, sitting on the wall?

A. I was only identified in the peaceful pictures.

Judge Biggs: I am not quite clear what you mean, Mrs. Bouslog. Almost any still picture is a peaceful picture.

Mrs. Bouslog: The transcript of the record, stipulated [158] into the record, shows there was one film——

Judge Biggs: You are now talking about the motion picture?

Mrs. Bouslog: Yes, where there are a number

(Testimony of Hiroshi Oshiro.)

of those in this case, and where the only identifications of them were of pictures where they were sitting along a seawall, and the testimony shows that those pictures were not taken until after the incident occurred.

Judge Biggs: All right. I understand the point.

Mrs. Bouslog: They were taken later.

Judge Biggs: I think we grasp what you mean.

Mr. Crockett: I have here the maps showing Kaumalapau Harbor. If counsel has no objection, I would be glad to put them in evidence.

Judge Biggs: Have you any objection?

Mrs. Bouslog: None at all, your Honor.

Judge Biggs: We will call it Exhibit "B." Is it a map showing Lanai City?

Mrs. Bouslog: No, your Honor, this is five miles from Lanai City.

Judge Biggs: I realize that.

Mr. Crockett: It shows the harbor——

Judge Biggs: Let's not be too technical. One witness testified the harbor was actually on the seacoast.

(Map of harbor, etc., received and marked: Defendants' Exhibit B.") [159]

Judge Biggs: The Clerk hands to the Court an order of consolidation in these cases.

Before we proceed in this matter, has the witness, Mr. Sibolboro been located yet?

Mrs. Bouslog: We are trying to locate him. If

(Testimony of Hiroshi Oshiro.)

not this afternoon, we will have him the first thing tomorrow morning.

Judge Biggs: Or you can have his testimony stricken out. I am afraid the remark made by the Court to the effect that we wanted him to remain here may perhaps have caused him some mental agitation or something.

Mrs. Bouslog: No, your Honor, not at all; he understood he was to come here this morning.

(Discussion between Court and counsel as to the number of witnesses remaining to be called and with regard to the calling of defendants' witnesses at the conclusion of the plaintiffs' case.)

Mr. Crockett: If the Court please, I have some pictures here of the locality of the Kaumalapau harbor incident, of which I have furnished counsel with a copy, and she has no objections.

Mrs. Bouslog: I have one picture that I think is not proper for you to put in at this time. That is this picture. (Handing picture to Mr. Crockett.) Apart from that picture I have no objection. [160]

Mr. Crockett: Then there will be six, if the Court please.

Judge Biggs: You have no objection to the withdrawal of the one?

Mr. Crockett: We will offer them as a group of six.

Judge Biggs: Any objection to Defendant's Exhibit "C"—these pictures.

(Testimony of Hiroshi Oshiro.)

Mrs. Bouslog: No objection.

Judge Biggs: They will be marked Exhibit C, 1 to 6, for defendants.

(Six pictures marked Defendant's Exhibit (1 to 6) "C," respectively.)

Mr. Crockett: Just a word of explanation. I would say the first three show the approach and the others show the harbor, by the wharf, and we will offer further evidence to identify the scenes more in detail.

Cross-Examination

By Mr. Crockett:

Q. Oshiro, did you testify before the District Magistrate when we had the preliminary hearing on this matter?

A. At Lanai, do you mean?

Q. At Lanai City? A. No, I did not.

Mr. Crockett: No further cross-examination.

Mrs. Bouslog: No further examination.

(Witness excused.) [161]

SHIGERO YAGI

called as a witness by the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please.

A. Shigero Yagi.

(Testimony of Shigero Yagi.)

Q. Where do you live?

A. At Kaumalapau.

Q. Is that down at the harbor itself?

A. Yes. What?

Q. Is that down at the harbor itself?

A. Yes, sir, it is about 200 yards, about that, from that harbor.

Q. In other words, you live at the side, down in the little housing area next to the harbor?

A. Yes.

Q. Are you employed by the Hawaiian Pineapple Company? A. Yes.

Q. Are you a member of the union?

A. Yes.

Q. Did you go on strike with the union on the 10th of July? A. Yes.

Q. Now you were charged, along with the 48 others, for riot and unlawful assembly on the 1st of August, is that correct? [162]

Q. Were you present at the time of the so-called harbor incident? A. Yes.

Q. When did you go down to the harbor on Monday? A. About 9:30. I went fishing.

Judge Biggs: Your questions and the answers are in a little too low a tone; and it goes progressively down the scale.

Q. What were you doing at the harbor on July 15, 1947? Were you down at the harbor on July 15, 1947? A. That day?

(Testimony of Shigero Yagi.)

Q. Were you down at the harbor at that date?

A. Monday?

Q. Yes. A. Yes.

Q. When did you first go down there?

A. Oh, I went about 9:30.

Q. What did you go down there for?

A. For fishing; spear fishing.

Q. Did you have your spears and your equipment with you? A. Yes.

Q. How long did you stay down there?

A. Oh, up to about 2:30 in the afternoon.

Q. What did you do then?

A. I went home, and then I saw people who came down, and [163] joined them.

Q. And were you present at the time the so-called incident happened? A. Yes.

Q. Did you at any time cross the kapu line?

A. No.

Q. Where were you? Were you sitting on the seawall, or where were you at the time?

A. Yes, I was sitting on the seawall.

Q. Where were you sitting?

A. On the seawall.

Q. (By Judge Biggs): You were sitting on the seawall?

A. Yes.

Q. Did the police say that it was all right for you to sit on the seawall; for the boys to sit on the seawall? A. Not that I know of.

(Testimony of Shigero Yagi.)

Cross-Examination

By Mr. Crockett:

Q. Were you arrested with the or among the other boys? A. Yes.

Q. Which group were you arrested with, the first group or the second?

A. The second group.

Q. What? A. The second group. Eleven.

Judge Metzger: Which group was it?

Mrs. Bouslog: He was arrested, as the record shows, with the group of 10 others; in other words, that first group that was arrested.

Judge Metzger: He is a plaintiff?

Mrs. Bouslog: Yes, your Honor.

Q. And when they had the hearing in your case what did you do, waive preliminary hearing?

A. Yes.

Mr. Crockett: That's all.

Redirect Examination

By Mrs. Bouslog:

Q. Just one question on redirect: Did you talk to the police? Did you give a statement to the police about what you were doing at the time the incident occurred? A. Yes.

Q. Did you tell them that you were talking to anyone at the time; about the time the incident happened? A. I don't remember.

Mrs. Bouslog: No further questions.

(Witness excused.)

HENRY K. AKI

called as a witness for the plaintiffs herein, being duly sworn, testified as follows:

Direct Examination [165]

By Mrs. Bousbog:

Q. Will you state, for the record, your name, please? A. My name is Henry K. Aki.

Q. By whom are you employed?

A. By the Hawaiian Pines Company.

Q. Were you a member of the union at the time of the strike? At the time the strike occurred?

A. No.

Q. What did you do on the morning of July 15th?

A. On that morning I went spear fishing.

Q. Were you right down at the harbor at the time the incident occurred? A. Yes, I was.

Q. What did you do while the incident was going on?

A. Just when the incident started I took one step in the kayu line and stopped and watched.

Q. Were you arrested in connection with the charge of unlawful assembly and riot?

A. Yes.

Q. Along with the 48 other people?

A. Yes.

Q. Did Lieutenant Medeiros of the police say anything to you at the time you were booked?

A. Yes.

Q. What did he say? [166]

A. Lieutenant Medeiros told me "How come I

(Testimony of Henry K. Abi.)

was arrested?" He knew I wasn't in the union, so he thought it was funny.

Q. Who put up your bail for bailing you out?

A. Pedro de la Cruz put in a bail of $100, and that is how I got out.

Q. Did you join the union after that time?

A. Right after Pedro de la Cruz pays my bail is when I joined the union.

Q. Did you have any conversation with any representatives of the Hawaiian Pineapple Company about the charge against you after that time?

A. Manuel Tavares, that is the superintendent down at the harbor, he knew I was not in the union, and I guess he must have told Lieutenant Medeiros about me not being in the union, and so that is how I got out, I think.

Mrs. Bunsbg: The record will show, your Honor, that this Henry Abi was dropped as a defendant at the time of the preliminary hearing, and by motion of the prosecution.

Cross-Examination

By Mr. Crockett:

Q. Did counsel mean that that was prior to the preliminary hearing—was it not, I believe the record shows that.

Mrs. Bunsbg: That is correct. The record shows the case was dismissed at the time when the defendants appeared [167] for their preliminary hearing, which was not held.

(Testimony of Henry K. Aki.)

Mr. Crockett: Then I have no cross-examination.

(Witness excused.)

NARCISCCO SIPE

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. My name is Narciscco Sipe.

Q. Where do you live? A. Lanai City.

Q. Who do you work for?

A. Hawaiian Pineapple Company.

Q. Were you working for the company at the time of the pineapple strike? A. Yes.

Q. Were you a member of the union?

A. Yes.

Q. Were you charged with unlawful assembly and riot in connection with the charge of assault and battery against the Kalua brothers?

A. Yes.

Q. Will you tell the Court what you know about that incident?

A. On the morning of—that morning the whistle blow 5:15, [168] and I woke up and got out from the house and went to the lavatory to move my bowels. After that I came out and I saw a bunch of boys but I cannot recognize who they were, and

(Testimony of Narciscco Sipe.)

then they started bunching, and it was too dark to recognize, so I ran away and ran away and joined the other union members going towards to the union hall.

Q. Did you make a statement about this to the police officers? A. Yes, I do.

Q. In other words, they picked you up for questioning, and you told them what you had been doing? A. Yes, I do.

Q. Now you are also charged and you face a 40 year sentence as a result of the pineapple strike of——

Judge Biggs: What do you mean by that?

Mrs. Bouslog: Two 20 year felony charges.

Judge Biggs: Yes, but the question of sentence lies with the Court. You had better rephrase your question.

Mrs. Bouslog: I withdraw it, your Honor.

Judge Biggs: Very well.

Q. You were also charged in connection with the incident at the wharf, at the harbor, is that right? A. That's right.

Q. Will you tell the Court whether you were involved in that incident? [169]

A. I was not involved in that incident.

Q. Tell the Court where you went or where you were at the time, and what you did.

A. I went to the harbor 10 minutes after the incident.

(Testimony of Narciscco Sipe.)

Q. In other words, were you at the time of the incident—Where were you at the time when the incident happened?

A. I was sitting on the seawall.

Judge Metzger: I don't get that. He went to the harbor 10 minutes after?

Q. What time did you come down—at the time you arrived at the harbor, was it before or after the incident was over?

A. After the incident.

Q. Where were you before you came down to the harbor; where did you come from?

A. By the city.

Q. What place in the city?

A. I was at the union hall.

Q. And when you came down to the harbor you then sat on the seawall, is that it?

A. The incident was over.

Q. But you were sitting on the seawall?

A. It was over, but——

Q. You were sitting down on the seawall?

A. Yes.

Q. You were identified in the preliminary hearing by the [170] picture showing you sitting on the seawall, is that correct? A. That's right.

Mrs. Bouslog: The record will so show, in the stipulated part——

Judge Biggs: Very well.

Mrs. Bouslog: No further questions.

(Testimony of Narciscco Sipe.)

Cross-Examination

By Mr. Crockett:

Q. Where do you live with respect to where Kalua and Nahinu were living?

A. They live at block 33, house 7.

Q. Where do you live?

A. I live about 100 yards away from them; it is about a block.

Q. Well, on which side do you live, towards where the union hall was or on the other side?

A. Oh, the union hall is far away. I guess it is about a quarter of a mile away from my home.

Q. So I understand that you were over to Kalua's house for the purpose of moving your bowels there?

A. Yes, that is the place that I moved my bowels, because it is the only lavatory there.

Q. And were you present when this bunch arrived at the house where Kalua was?

A. No, I did not.

Q. Where were you then? [171]

A. I ran away.

Q. Well, did you run away before they arrived or run away after they arrived?

A. I ran away because I don't like to be beaten up.

Q. Well, I am asking you: When did you run away, before they arrived or after they arrived?

A. Before they arrived.

Q. You ran away before they arrived at Kalua's?

(Testimony of Narciscco Sipe.)

Mrs. Bouslog: I think perhaps the witness is not understanding the question. It might be that we need an interpreter for this witness for a full understanding of the testimony.

Judge Biggs: Well, we got through his examination in chief without difficulty, and without one, and we will take the cross-examination without it, and then if you desire an interpreter later, you may have one.

Q. If you ran away before they arrived, how did you know they were going to beat up somebody? A. Well, that I don't know.

Q. Well, after they had this trouble you were picked up by the police? A. Yes, I was.

Q. And do you recall whether or not the police confronted you with Kahawanui?

A. I was picked up by officer Nicholas Dorondo, of Lanai [172] City.

Q. Did they bring you face to face with one of the boys that was beaten up? A. Yes.

Q. Which one was that?

A. Sam. He accused me of beating him.

Q. And he recognized and identified you?

A. He identified you but I was not there.

Q. When he identified you that was in the presence of the police?

A. What is that, Mr. Crockett?

Q. When Sam identified you and said that you were there, that was in the presence of the police officers?

(Testimony of Narciscco Sipe.)

A. Oh, that was in the court house.

Q. In the court house. That's all.

Redirect Examination

Judge Biggs: Do you want an interpreter?

Mrs. Bouslog: No, I think, your Honor, that Mr. Crockett in the course of the questioning straightened out what I thought was a misunderstanding.

Q. Mr. Sipe, when you left the lavatory did you see some men fighting, when you left the lavatory?

A. As soon as I got out from the lavatory I was standing a little while buttoning up my pants, so and so, and then I started to see they were punching each other, but I cannot [173] recognize who they were, and then I start running.

(Witness excused.)

ABRAHAM MAKEKAU

called as a witness for the plaintiffs, being duly sworn, testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please.

A. My name is Abraham Makekau.

Q. Where do you live?

A. Lanai City, Lanai.

Q. Do you work for the pineapple company?

A. Yes, I do.

(Testimony of Abraham Makekau.)

Q. Are you a member of the union?

A. Yes, I am.

Q. Did you go on strike with the union on the 10th? A. Yes, I did.

Q. You were charged for unlawful assembly and riot in connection with the assault and battery on the Kalua brothers. A. Yes.

Q. Will you tell the Court what you know about that incident?

A. Well, on the day before the incident I heard rumors about—rumors going around about that they were going down to the Kalua's, and tell them not to cross the picket line, so since I knew Sam, well I thought that I would break it up in the [174] beginning, and go down——

Judge Biggs: You will have to keep your voice up. These ladies and gentlemen must hear, and so keep your voice up, please.

A. To go down and tell them not to cross the picket line, since I knew them well, but on my way down I met some of the boys coming up, and they told me that there was some shoving and pushing down there, so on my way down, before I reached where the incident happened, I saw Jacob, he was over there, and I guess Sam Kalua recognized me, and pointed me out, and then after that I left there and came back to the union hall.

Q. What Jacob, Jacob Kalua?

A. Yes, Jacob. Jacob Kalua.

(Testimony of Abraham Makekau.)

Mrs. Bouslog: The record shows they are Sam and Jacob.

Judge Biggs: Sam and Jacob.

Q. Did you tell the police this when you were being question up there, by them?

A. Well, when I was picked up in the morning by the officers, the police brought me down to the police station, and they told me if I knew Sam and Jacob, and I told them that I knew Sam and Jacob about five years—I knew Sam about five years, but I didn't know Jacob well, so they brought Jacob in and Sam and told them to identify me, and they pointed me out.

Questions by Judge Biggs: [175]

Q. What time of day was this?

A. It was about 8:30 when I was down there.

Q. No, the time of the incident?

A. It was about 5:30.

Q. What time does the whistle blow on Lanai?

A. 5:30.

Q. Is that when everyone is working on Lanai? What time do they ordinarily get up?

A. When the first whistle blows.

Q. That is what time?

A. Either 5:30 or 5:15.

Q. You are comparatively early risers on Lanai. Is it light or dark at that time?

A. Well, it is dark; pretty dark.

Q. Now you were also charged with riot and unlawful assembly as as a result of the harbor incident, is that correct? A. Yes, I did.

(Testimony of Abraham Makekau.)

Q. Were you down at the harbor at the time the incident occurred?

A. Well, at the time of the incident I was not down there because I brought up some matches. I was on a motorcycle.

Q. Were you down there before and afterwards?

A. Well, during the morning, about 10 o'clock, we had a picket line down there, and that is when I was there.

Q. I did not quite understand what you said. You said you [176] had, what was it—a motorcycle, was that what you had?

A. Well, I was riding on a motor-cycle, and we were down there, so we came up to the city again, up to the union hall, and then when we went back everything was all pau.

Q. Where were you before the incident?

A. Before the incident I was up—on my way up.

Q. On your motor-cycle on the way up?

A. Yes.

Q. How long after the incident did you arrive?

A. I arrived about—it was about five minutes afterwards.

Cross-Examination

By Mr. Crockett:

Q. What portion of Lanai do you live in?

A. Well, I live block 20, the house is way up towards Honopu.

(Testimony of Abraham Makekau.)

Q. About how far away is that from where the Kalua brothers were living?

A. Oh, it is about—I think it is less than a quarter of a mile.

Q. In order to go to the house where the Kalua brothers lived was it necessary to go past the union headquarters?

A. Well, yes, you pass on the main street.

Q. What time did you get up that morning?

A. I got up about—it was about 10 after five, I think.

Q. You say you had heard rumors the day before that someone [177] was going down there?

A. Yes.

Q. Were there any orders given or any instructions given about it? A. No.

Q. Just loose talk that you heard about it?

A. That's all.

Q. About what time during the day was it you heard that talk?

A. That was on the beginning of the incident at the harbor.

Q. About what time?

A. Well, it was about seven o'clock.

Q. You did not go down to warn them at that time, did you?

A. No, because I was in the union hall.

Q. You say when you got up in the morning you decided to go down at that time to warn them?

A. Yes, on *may* way down to the union hall.

(Testimony of Abraham Makekau.)

Q. How many went down altogether from the union hall to where this trouble took place?

A. I don't know.

Q. Well, about how many?

A. I saw some were on the road, but I don't know who they were.

Q. I see. How many were there, about?

A. I don't remember.

Q. Do you remember when you were questioned about this, [178] saying there were about 25 persons that went down?

A. I don't remember.

Q. Well, can you give us any idea; was it more than two or three?

A. I saw, when I went down—I saw some were coming up.

Q. But when you went down had the fight occurred already, or was it after you got there that the fight occurred?

A. When I got down there everything was done already.

Q. It was done already? A. Yes.

Q. You did not see any fight at all when you got there? A. No.

Q. Were you questioned by the police in this matter? A. Yes.

Q. Which officer was it that questioned you?

A. I don't know whom.

Q. Do you recall an officer by the name of Seabury on Maui? A. I think so.

(Testimony of Abraham Makekau.)

Q. (By Judge Biggs): Is the answer "yes"?

A. Yes.

Q. Is he the one who questioned you?

A. I don't remember.

Q. You remember Seabury? A. Yes.

Q. You don't remember whether he questioned you or not? [179] Will you answer the question?

Judge Biggs: Answer the question, please.

A. Yes.

Q. Do you recall when Seabury asked you the question of about how many men went down, and you said "about 25"?

Mrs. Bouslog: I did not understand the witness to say that he knew. The witness said he didn't know whether officer Seabury questioned him or not.

Judge Biggs: That's right, he said he knew there was an officer named Seabury, and he didn't know whether that was the one, the officer, who questioned him.

Q. Is that correct?

Mrs. Bouslog: I object to the question. It is assuming something not in evidence.

Judge Biggs: I think it is properly within cross-examination, Mrs. Bouslog.

(Question read by reporter, as follows: "Do you recall when Seabury asked you the question of about how many men went down, and you said 'about 25.' ")

(Testimony of Abraham Makekau.)

Judge Biggs: Now you are assuming something there, Mr. Crockett.

Mr. Crockett: I will withdraw the question.

Judge Biggs: Make it "the officer," unless you can make the witness say it was Seabury.

Q. Do you recall when the officer asked you the question [180] of about how many men went down there, and you said "about 25 men"?

A. I don't remember the question.

Q. And do you recall that the officer asked you "To where"? and you answered "I went down block 33, and then the fight went on"?

A. I don't remember.

Q. And do you recall the officer asking you the question: You were asked: "You went down to Kalua's place, is that right"? and you answered: "That's right"?

A. That I went down, yes, to warn them.

Q. And do you recall whether or not the question was asked: "What happened when you got there?" to which you answered "Had a riot."

A. No.

Q. You say "no," or you don't remember ?

A. I don't remember him asking me that.

Q. Do you recall further the question was asked "When you got down to this particular house they started fighting in the rear of the house?" to which you answered "I saw them fighting."

A. I don't remember telling him that.

Q. And do you recall this question, "And you

(Testimony of Abraham Makekau.)

want to say that while the fight was going on you were standing by looking?" to which you answered "Maybe I was trying to get in, but too [181] many guys?"

A. I didn't make that statement.

Q. And do you recall being asked the question: "What do you mean by trying to get in?" and you answered "Get in and help the strikers, but they had him already"?

A. No, I did not say that.

Q. Do you recall being asked this question: "Could you identify any of them that beat up these two brothers?" to which you answered that "I don't know, but when he got through and he said he got enough, and I guess he saw me."?

A. No, I didn't say that.

Q. And the further question was asked. "Who said he got enough?" to which you answered "I guess Sam's brother"?

A. I don't remember.

Q. So as I understand your testimony at the present time it is that the fight all took place before you got down to where this incident occurred?

A. Yes.

Q. And was all finished?

A. Yes, that is when I saw Jacob.

Q. Did you talk with Jacob? A. No.

Mr. Crockett: That's all.

Judge Biggs: Any redirect?

Mrs. Bouslog: No.

(Witness excused.) [182]

Judge Biggs: How many more witnesses?

Mrs. Bouslog: Your Honor, I have finished my testimony in relation to the incident at the harbor and the Kalua brothers incident. I am ready now to go ahead with my case with respect to the Grand Jury, and I think, if the Court please, I would like that a recess be called at this time. I believe I will be able to finish in two hours in the morning.

I could dispose with one witness if the defendants will at this time stipulate that Mr. Jack Kawano, president of the Longshoremen's Union, who is sued in his individual and representative capacity, is still a member of the ILWU, and is being sued in his representative and individual capacity, and that will dispose of that witness, otherwise we will have to call him.

Miss Lewis. We stipulate he was a member of the union, and as to the office he holds, but my idea of representative capacity is that it is wholly a question of law, as to whether he can bring a class suit in a matter of this kind.

Mr. Symonds: Will you stipulate he will so testify, Miss Lewis?

Miss Lewis: I cannot stipulate in the matter. We had a witness here this morning,—and if it is directed to the idea he would testify along the same lines, that was just a [183] matter of conclusion, that the union members were in fear,—and I don't think it proved anything.

Mrs. Bouslog: We are talking only about the representative capacity.

Judge Biggs: What is the point of having him come in here, only to have him testify that from his understanding he is bringing suit in his representative capacity?

Mrs. Bouslog: It was denied, your Honor.

Judge Biggs: It was denied? I think you had better, perhaps, bring him. We will adjourn until 9:30 tomorrow morning, Saturday, and the Court will stand adjourned at this time.

(Whereupon an adjournment was taken until 9:30 o'clock a.m., Saturday, April 4, 1948.)

April 24, 1948, Morning Session

All parties present as at previous sessions, upon the Clerk calling the cases, the trial resumed as follows:

Mrs. Bouslog: I believe that Mr. Sibolboro is in the courtroom.

Judge Biggs: Suppose you call him back.

NICHOLAS C. SIBOLBORO

a witness for the Plaintiffs, resumed the stand, having been previously sworn, was examined further as follows:

Mrs. Bouslog: Give your name and spell it.

The Witness: Nicholas C. Sibolboro.

Judge Biggs: Now cross-examine at your convenience, Mr. Crockett.

(Testimony of Nicholas C. Sibolboro.)

Cross-Examination

By Mr. Crockett:

Q. Nicholas, you testified yesterday that you were arrested at Wahiawa? A. Yes, sir.

Q. Wasn't the cause of your arrest that you, in the course of picketing, laid down on the road in front of a truck? A. Right.

Q. Is that right? A. Yes.

Q. And in order for the truck to proceed along the highway the police officers had to come and take you away? [185]

A. That's right.

Mr. Crockett: That's all.

Q. (By Judge Biggs): Was the truck moving when you laid down? A. No, sir.

Judge Biggs: That's all.

Mrs. Bouslog: Just one question.

Judge Biggs: Just a moment, please. A rather serious question has come up here. I would like to have counsel's reaction to it immediately. None of these witnesses has been informed of his constitutional rights respecting testimony which might tend to incriminate him. For example, this witness and other witnesses have testified to acts which may be misdemeanors, or even felonies under the laws of the Territory. For example, this witness testified that he laid down in front of a truck on the highway.

Mrs. Bouslog: I have explained to each of the defendants myself what their constitutional rights are.

(Testimony of Nicholas C. Sibolboro.)

Judge Biggs: And you represent them also in those other proceedings?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: In all of them?

Mrs. Bouslog: Yes, your Honor.

Judge Harris: You then certify to the Court that you have undertaken in each instance to particularly advise each person who otherwise might be a defendant in a criminal case [186] as to his constitutional rights to refuse to take the stand?

Mrs. Bouslog: Let me look at my list.

Judge Harris: Yes, I wouldn't want any question to arise, and I know Judge Biggs wouldn't.

Judge Biggs: No, I wouldn't, nor Judge Metzger, or any or all of the members of the Court.

Mrs. Bouslog: Your Honor, I have been the counsel for all of the defendants for approximately two years from the time of the sugar strike. I have talked to each one of them at various times. As a matter of fact, I have been trying to inform them of what their constitutional rights are, and in relation to these defendants specifically, each one of them at the time he took the stand was aware that he has a right not to testify against himself, although, as your Honor has observed from the various reports no police officer or no district magistrate in the Territory ever so advised the defendants before.

Judge Biggs: They were aware of their constitutional rights not to testify because you so informed them?

(Testimony of Nicholas C. Sibolboro.)

Mrs. Bouslog: Yes.

Judge Biggs: Now did you enter an appearance for all the defendants in these two criminal proceedings?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: And you presently represent them?

Mrs. Bouslog: Yes, your Honor. [187]

Judge Biggs: You called them and you wanted them to testify?

Mrs. Bouslog: Yes, your Honor.

Judge Harris: Merely as a safeguard for the record, you might file in behalf of these various persons a mere statement to the Court that they are voluntarily taking the stand without any compulsion exercised and at your suggestion and to the end that a full disclosure of the facts may be made.

Judge Biggs: I think the record is clear as it stands. I think your statement is quite sufficient. As we understand it, you have talked to all of the witnesses who appeared and you informed them that they had the right not to testify. As a matter of fact, were any of them subpoenaed outside of Mr. Young?

Mrs. Bouslog: No, none of the plaintiffs.

Judge Biggs: None of the plaintiffs' witnesses, and you informed them that they had a right not to testify, and as to their constitutional rights?

Mrs. Bouslog: Yes, your Honor.

(Testimony of Nicholas C. Sibolboro.)

Judge Biggs: And you represent all of the defendants in the criminal proceedings?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: You also represent all of these union members in respect to all criminal proceedings? [188]

Mrs. Bouslog: In respect to all criminal proceedings arising out of labor disputes.

Judge Biggs: We think that is sufficient. You had no further questions?

Mrs. Bouslog: Yes, your Honor, one question.

Redirect Examination

By Mrs. Bouslog:

Q. Mr. Sibolboro, were the 93 other people arrested with you charged with lying down in front of the truck? A. No, ma'am.

Miss Lewis: To which I object.

Judge Biggs: The answer is no.

Miss Lewis: There is no showing that they were arrested with Mr. Sibolboro.

Judge Biggs: The answer is no. Would you give Miss Lewis a chance to interpose her objections, please? Don't speak quite so promptly.

Mrs. Bouslog: No further questions.

Judge Biggs: Any further cross-examination?

Mr. Crockett: No further questions.

(The witness was excused.)

Mrs. Bouslog: Your Honor, I would like to read into the record at this time in connection with the plaintiffs' contention that there is a serious danger of loss of jobs on the part of the plaintiffs here, the defendants in the criminal [189] actions in the Territory in the event they are forced to stand trial.

Judge Biggs: Read what into the record?

Mrs. Bouslog: I am reading from a part of the oral decision rendered by the Honorable Cable Wirtz for the County of Maui, when Mr. Crockett, the Prosecutor, was present on that day, as was I. The only part that is relevant to this proceeding is the part in which the judge discusses the company rules. It is very short and I would like to read it into the record.

Mr. Crockett: I object, if the Court please, because it has no bearing whatever on the issues of this case. The Court in the course of that particular case made reference to certain things, and there is no showing in the decision whether or not it is based upon his personal knowledge. It was not evidence in the case. It has no bearing on this particular case. He was not an employer and had no connection with the company, and he was in no position whatever to see the effect of the company rules or whether or not people had been discharged because of company rules. It was merely after the argument in which those rules were discussed the Court made a kind of general observation. The statement itself will show what he said was not material to the case.

Judge Biggs: We have very serious doubts as to its relevancy. It is, however, a matter of which we could take [190] judicial notice, so probably it would be of some aid to the Court to have it read into the record. We will overrule the objection and make the usual ruling that it is subject to a motion to strike. Read the paragraph and you can put the paper in evidence.

Mrs. Bouslog: It appears to be in the Circuit Court of the Second Circuit, Territory of Hawaii vs. Basiliso Arruiza. This is an appeal in mitigation, Criminal No. 2242. We have the system, your Honors, that if a defendant pleads guilty before the District Magistrate, then he cannot thereafter change his plea or get a jury trial, if he pleads guilty in the first instance.

Judge Harris: The plea cannot be vacated thereafter on any ground?

Mrs. Bouslog: No, except with the permission of the Court. (Reading from Plaintiff's Exhibit No. 13.)

"The Court: I think I am in a position to consider the matter. Concerning the last matter referred to about the so-called company rule, I don't know exactly what the rules are. The Court does have some judicial knowledge that a jail sentence probably would jeopardize his position. Unfortunately this Court has known of situations where the fact that a man was charged has cost him his job. It places the Court in an unfortunate position. When he has pleaded guilty and places

himself at the [191] mercy of the Court, that defendant has been jeopardized in seeking employment to conform to the terms of probation. I have known several instances of that type concerning the pineapple company and although I think that is a matter of consideration, I don't think it is a matter which is vitally before the Court."

Judge Biggs: That is pretty remote, indeed. I think we will received the document nonetheless, Miss Lewis, subject to a motion to strike. Do you want to be heard?

Miss Lewis: I just want to enter an objection if the Court would reconsider it. It is stipulated that all plaintiffs in these cases at the time of the filing of the injunction still had their respective employers and their respective companies, and they have been charged long before. Therefore, apparently in some other company at some other time something else may have happend. I don't know how anything could be more remote.

Judge Biggs: Let's not argue the matter further. I think it is extremely remote; nonetheless it has been read into evidence, so let's waste no more time on it. Objection overruled. Exception noted. It is treated as being subject to a motion to strike. Let the document be marked as Plaintiffs' Exhibit 13.

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 13 and received in evidence.) [192]

PLAINTIFF'S EXHIBIT NO. 13

In the Circuit Court of the Second Circuit
Territory of Hawaii

January A.D. 1947 Term

Criminal No. 2242—Assault and Battery

TERRITORY OF HAWAII,

vs.

BASILISO ARRUIZA,

Defendant.

ORAL DECISION

Rendered December 23rd, 1947

Present: Honorable Cable A. Wirtz, Judge Presiding; Mr. David W. Tallant, Deputy Clerk; Mrs. Ivy W. Parks, Reporter; Mr. Lyons K. Naone, Jr., Bailiff; Wendell F. Crocket, Esq., Deputy County Attorney; Mrs. Harriet Bouslog, Attorney for Defendant.

(Handwritten marginal note to read first paragraph into the record.)

The Court: I think I am in a position to consider the matter. Concerning the last matter referred to about the so-called company rules, I don't know exactly what the rules are. The Court does have some judicial knowledge that a jail sentence probably would jeopardize his position. Unfor-

tunately this Court has known of situations where the fact that a man was charged has cost him his job. It places the Court in an unfortunate position. When he has pleaded guilty and places himself at the mercy of the Court, that defendant has been jeopardized in seeking employment to conform to the terms of probation. I have known several instances of that type concerning the pineapple company and although I think that is a matter of consideration, I don't think it is a matter which is vitally before the Court.

The administration of criminal law serves two vital concepts. We go back to the law of Moses—an eye for an eye—and the deterrent factor. That is of course besides the punishment that the Prosecution concerns itself with. On the other side we have the individual treatment recognizing that people who come from different circumstances or are involved in different temperaments, perhaps, might have even psychological problems. We have the theory of rehabilitation in making the person a fit citizen to serve in the community. That is the side and phase that most defendants attempt to show the Court and what normally the Probation Department of every court is interested in. We have those two conflicting concepts that present themselves to every judge in imposing sentence.

There has been a lot said here about the circumstances of the defendant. The Court is satisfied that insofar as his residence in the Territory is concerned he has no criminal record. He has been

investigated on one occasion and unfortunately the record in the lower court shows that he was charged with participation in a riot matter during the pineapple strike. However, the presumption of law is that he is innocent of that charge until proven guilty beyond a reasonable doubt. As to the other charge referred to, the actions of the police speak more eloquently than the presumption. They did not see fit to press charges.

Of course the Court cannot be exact on this, nor can the Prosecution, but the only thing they have been able to elicit is that while on the Mainland United States in the vicinity of Seattle, Washington, he was involved with a girl, presumably on a sex offense. As he so eloquently stated, they were found living together in a room. That is over a period of nine years ago. That is also not a true indication of a man's character. So many offenses go unnoticed, unprosecuted, untouched, but be that as it may, that is the picture that the Court has of this man's criminal tendencies. Both crimes are crimes of passion but stemming from and directed towards different sources and for different reasons.

The one thing that concerns this Court is that this man on his own testimony was a former police officer. He knows and understand the value of law enforcement. He knows that even in his own community people are charged with offenses similar to this. And also, while I am not going to get into a moot questionable argument about whether a coco-cola bottle, full or empty, is a weapon imminently

dangerous to life, the Court does know it can pack quite a wallop if properly used and could cause serious damage.

This Court has always been very concerned about assault and battery because assault and battery cases are precursors of the lynch law. It is the taking of law into your own hands. From a deterrent angle, I have been very concerned where such force might have occurred in public where there is always that spark that could set forth an affray or mass fighting in the streets and so on.

This offense occurred at a private party. Counsel is correct that the forgiveness by the complaining witness, which affects his civil rights, is something that can be considered in mitigation. Unfortunately, once the Prosecution has the matter under consideration, it is sometimes unable to forgive.

I am concerned about one other thing in this case. Reading over the record in the matter—this Court itself, whenever it has arraignment, has been very careful to advise defendants of their rights in pointing out to them that if they were indigent, we would make an investigation to that effect, and if they were truly indigent we would see that they were represented at no expense to them by counsel. I find nowhere in this record of the proceedings where this defendant was asked whether he wished an attorney. The Supreme Court in a recent case, I don't recall the citation—the Supreme Court of the United States was very insistent upon that point. That is, apart from the interpretation.

Another thing that concerns the Court is that after finding the defendant guilty and asking the Prosecution for any recommendations — and you were not there, so this is no reflection on you—the Prosecution immediately points out the participation in a riot case and that he is committed to the Grand Jury of the Second Circuit. Other than that, there is no recommendation. The Court goes on—after reading aloud the report of the doctor, goes on and imposes sentence.

Bearing all these things in mind, the Court feels that it should modify the sentence imposed in order to really give justice in the matter. However, the Court will not go so far as to suspend execution of the sentence. This man's difficulty seems to arise after hours, recreation, and proceeds from an inability to either curb his appetite for drink or curb his emotions when under the influence. The Court being likewise mindful of the peculiar temperament of the race understands that sometimes they can hit each other on the head one day and kiss and make up the next day.

However, the Court will modify the jail sentence heretofore imposed to this extent: that the imprisonment will apply only during those periods when the defendant is not employed. That is, when there is work for him and he is willing to work, he shall of course surrender himself to the police within a reasonable period after his employment terminates for the day and be released in time to permit him

to take up his employment in the morning. Other than that, judgment will stand.

Mrs. Bouslog: May I thank the Court and request that if the Court would suspend the execution of that until after Christmas.

The Court: I will stay the mittimus—what has the Prosecution got to say about it? This is the 23rd of December.

Mr. Crockett: Well, if the Court please, I would suggest it be stayed until the 2nd of January. I think the Filipino holiday comes about the end of the year. I have no desire to deprive him.

The Court: The Court will stay the mittimus on the sentence as modified until the 2nd of January, 1948.

Now, is the Court's modification of sentence clearly understood?

Mr. Crockett: I think so, if the Court please, unless the Court wishes to make it a definite hour when he should return. I think in practice the police have found a little difficulty on that.

The Court: My purpose was within reason to permit this man his employment by confiing him during periods of his recreation. I don't know whether they work on Saturdays, Sundays and so on. If Counsel can get together and present something more definite and satisfactory to the Court—. I hope you clearly understand what is in the Court's mind and what the Court intends to accomplish by its order.

Mrs. Bouslog: It seems to me, your Honor, that

your Honor's order is the most satisfactory because sometimes there is overtime work and sometimes not.

The Court: That is correct.

Mrs. Bouslog: And if the order is that he report a reasonable time after work, I am sure the police officers on the Island of Lanai will fix a reasonable time in case of any difficulty. An arbitrary fixing of the matter——

The Court: Might deprive him of overtime employment. That is correct.

Mr. Crockett: I will prepare the order of the Court and submit it to Counsel.

The Court: Very well. We will stand adjourned until further order.

(Second Circuit Court adjourned at 11:47 a.m.)

Dated at Wailuku, Maui, T. H., December 23, 1947.

Admitted.

Mrs. Bouslog: I will mark the part that was read into the record, your Honor.

Judge Biggs: Very well; proceed.

Mrs. Bouslog: Your Honors, we will now call Jack Kawano.

JACK KAWANO

a witness called by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. Jack H. Kawano, K-a-w-a-n-o.

Q. Where do you live, Mr. Kawano?

A. 3190 Upper Pauoa Valley Road.

Q. Are you a member of the ILWU?

A. I am.

Q. Are you at present an officer of the International Longshoremen's and Warehousemen's Union?

A. I am. I am one of the members of the International Executive Board, and locally I am president of the Longshoremen's Local, ILWU.

Q. Are you the Jack Kawano who is named as a plaintiff in one of these actions before the Court?

A. I am.

Judge Biggs: That is sufficiently definite.

Q. At the time the complaint in that case was filed, what [193] was the International Longshoremen's and Warehousemen's Union Territorial Council?

A. Well, at that time the Territorial Council was an organization of all of the various locals of the ILWU here in the Territory. The main purpose of that organization was to coordinate all

(Testimony of Jack Kawano.)

of the activities of the ILWU as closely as possible under one administrative system.

Q. Is the Territorial Council still in existence?

A. It is not.

Q. What happened to it?

A. Well, it automatically went out of existence as a result of a meeting held by representatives of various locals assembled here in Honolulu. The reason for that was because in the past few months back locals were consolidated on an industrial basis. In other words, all locals of the longshoremen were consolidated into one territorial local. Sugar the same; and pineapple the same; and miscellaneous the same. The necessity for coordinating as it was then under the Territorial Council was no more needed, because all of those various locals are now in four major locals.

Q. Tell me, Mr. Kawano, in longshore, sugar and pineapple is the bargaining done on a territory-wide basis?

A. As far as I can remember it is done on a territory-wide basis.

Q. Who represents the employers in the negotiations? [194]

A. Every employer that I can remember is represented by the Employers' Council.

Q. What is the Employers' Council?

A. Exactly what their duties are I don't know, but from what I recall their duties seem to be to help the employer group in negotiations in mak-

(Testimony of Jack Kawano.)

ing very important decisions dealing with labor-management relations, etc., etc.

Q. Now the complaint in this case states that you brought the action individually and in your representative capacity for and on behalf of the International Longshoremen and Warehousemen's Union and its members. Is that true?

A. That is correct.

Q. Why did you bring the action in that capacity?

Mr. Crockett: To which we object, if the Court please. It has no bearing on the issues of the case.

Judge Biggs: Objection overruled. We will take the answer.

A. In my opinion it was very important that I did that.

Judge Biggs: Just state why.

A. Because it affected all in general of the members that I represented. In other words, I wasn't only representative of the Longshoremen's Union, but I was in effect a representative of all of the members of the ILWU in the Territory.

Q. What effect, in your opinion from your observation, has the Unlawful Assembly and Riot Statute had upon the International [195] Longshoremen's and Warehousemen's Union in the Territory?

Mr. Crockett: We object to that as calling for a conclusion of the witness with no foundation laid on which to base his conclusion; also calling for

(Testimony of Jack Kawano.)

more or less a conclusion almost as to whether or not the law does have any effect on the rights of the union.

Judge Biggs: I think you should qualify the witness further as to foundation. What does he know about this situation? Objection sustained.

Q. (By Mrs. Bouslog): Mr. Kawano, how long have you been an officer of the ILWU?

A. Well, as an officer of the Longshoremen's Union I have been since 1937.

Q. Was the Longshoremen's Union the first group in the Territory organized by this union?

A. That's right.

Q. And in the course of your official duties as president of the longshoremen, have you had occasion to take any official action by the longshoremen's executive board that bears upon the Unlawful Assembly and Riot Statute?

A. We certainly did.

Q. Will you tell the Court what that was?

A. It was sometime about three or four months back. We had been negotiating with the employers for about eight months previous to that time, and we came to a point where we decided [196] that we had to have a showdown with the employers, and the majority of our members decided that there was going to have to be a showdown because the employers were not paying any attention to our negotiating committee, and they were putting a lot of heat on our men on the job. So we de-

(Testimony of Jack Kawano.)

cided to cut off negotiations about three months ago and go into a strike. At that time the negotiating committee of the Longshoremen's Union got together and planned the strategy for a strike. but this thing popped up, this thing of unlawful assembly. We were made to understand, according to the laws of the Territory, that it would be very possible that not only a few of our members, but a great portion of our members, if we did go out on strike and assemble ourselves on a picket line, would be picked up by the authorities and be thrown in the can for 20 years.

Judge Biggs: I think that takes it far enough. You renew your objection to the question?

Mr. Crockett: Yes, if the Court please, on the same ground I stated.

Judge Biggs: Same ruling; objection overruled, and note an exception. Has the question been answered?

Mrs. Bouslog: Will you read the question?

(The question was read by the reporter.)

Q. (By Mrs. Bouslog): What effect has the Unlawful Assembly and Riot Statute had on the unions in the Territory? [197]

A. The effect it has in the Territory was such that it prevented us from making proper deliberations insofar as strikes and other things dealing with concerted activities are concerned.

Q. What do you mean by us, Mr. Kawano?

A. What is that?

(Testimony of Jack Kawano.)

A. I mean all of the members in labor unions. In this case particularly the ILWU members.

Q. What do you mean by "us"?

Q. Do the employers in the longshore industry in the Territory submit wage questions to arbitration when they can't be settled otherwise?

A. They do not.

Q. So what methods do you have of enforcing the union's demands in the event negotiations and mediation break down?

A. The only way to settle an issue like that between an employer and a union is by straight negotiations or by strikes.

Mrs. Bouslog: No further questions.

Cross-Examination

By Mr. Crockett:

Q. Mr. Kawano, you said it was about eight months ago. Do you mean eight months from this time, or when was that more definitely?

A. Exactly what do you mean by eight months ago?

Q. In your last answer you mentioned something about your [198] executive board discussed the conditions that existed and you said you had to have a showdown because they were putting a lot of heat on, and you said that this was about eight months ago.

A. I state, if I remember correctly, that about three months ago our executive board met as a re-

(Testimony of Jack Kawano.)

sult of not reaching any decision after about eight months of negotiations.

Judge Biggs: Just answer the question first and then you can make your observation.

Q. I just want to know the time. Then you mean three months from now, three months before the present time? A. That's right.

Q. That would be sometime the month of January or February? A. That's right.

Q. You also stated that you were made to understand that there were certain things about members being picked up and thrown into the can for 20 years. Who gave you that understanding?

A. The understanding I got was an interpretation of the so-called Unlawful Assembly Act.

Q. By whom? A. By various people.

Q. Well, did those people appear before the executive board and explain it to the Board?

A. Not exactly to myself, but those things have been brought [199] out,——

Q. You mean that it was an understanding,——

Judge Biggs: Let the witness complete his answer, Mr. Crockett.

Mr. Crockett: Pardon me.

A. What is the Unlawful Assembly Act? What is the maximum?

Judge Biggs: Don't ask the counsel questions, please. Just answer the questions as well as you can. Suppose you begin again, Mr. Crockett.

Q. (By Mr. Crockett): My question, Mr. Kawano, is simply who gave you the understanding?

(Testimony of Jack Kawano.)

Was it any of the prosecuting officers of the Territory, or did you pick it up from the street?

A. I think I picked it up in the newspaper.

Q. You got it from the newspaper?

A. Yes.

Mr. Crockett: That's all, if the Court please.

Mrs. Bouslog: That's all.

Judge Harris: I would like to ask counsel or this witness whether anyone has ever been sentenced under this particular act, and if so the duration of the penalty meted out. The mention of 20 years with continuity throughout this record generates a little confusion in my mind.

Mr. Crockett: Might I explain our laws provide that in every case that a maximum sentence is imposed by the Court, [200] but after the maximum is imposed why a minimum is then set by a board of prison officials, the Parole and Pardons Board, and that minimum is then referred back to the Court for its approval. To my knowledge, no person has ever been sentenced to serve 20 years in any case under this statute.

Judge Harris: Do I understand the answer to my question is that if John Doe or Mary Roe be found guilty under the statute that it is mandatory upon the part of the Court to mete out a maximum sentence, to wit 20 years, to the defendant?

Mr. Crockett: If the Court is going to impose imprisonment, it would be mandatory to fix a maximum of 20 years.

(Testimony of Jack Kawano.)

Judge Harris: Or the Court could suspend the sentence and grant probation and in addition impose a fine?

Mr. Crockett: The recent session of the Legislature provided that a fine could be imposed. It automatically made the sentence to be a fine.

Judge Harris: Did the last Legislature have anything to do with the amendment of this particular act with respect to punishment?

Mr. Crockett: With respect to punishment, yes, but not with respect to the unlawful assembly law.

Judge Harris: As to the main fabric of the act, the contents of the act, no amendments were made thereto?

Mr. Crockett: As I recall, the last session of the Legislature made the provision that if a statute provided only imprisonment that the Court had the option of automatically giving him imprisonment or a fine. Prior to that there was some statute which said "Fine or imprisonment." There were others which said "Only imprisonment." There were some which said "Only a fine," but the Legislature passed an act so that the Court in every case of a conviction of a felony has the option to impose imprisonment or a fine. That was made a part of the general law, and that is the condition today. So the Court has three options, of imposing imprisonment, or imposing a fine,—I should not say three. They can impose imprisonment plus fine, or they can suspend imposition of sentence, or they can impose

(Testimony of Jack Kawano.)

sentence and suspend the execution of the sentence. So that the Court has the widest possible latitude. Coming back to the question which the Court asked, to my knowledge, no person has ever been given a maximum of 20 years under the Riot Statute.

Judge Harris: What has been the minimum overall average of sentences meted out by Courts?

Mr. Crockett: I can't say, if the Court please. We have had only one case in our circuit, and there is one case in the Kaui circuit.

Judge Harris: Did they arise out of labor disputes, or general run of the mill?

Mr. Crockett: Labor disputes, I believe. [202]

Judge Harris: What were the sentences?

Mr. Crockett: The one which arose in our circuit was about 20 years ago, and although I was counsel in that case, I don't recall. It was relatively small. At that time I think the law provided only a maximum of five years.

Judge Biggs: Pardon me. You are through with this witness?

Mrs. Bouslog: Yes.

(The witness was excused.)

Judge Biggs: Let's get the matter quite straight. I am not clear myself. I think it might be well if some sort of memorandum were submitted in respect to it at counsel's convenience.

Mr. Crockett: I can check up on the amount of the penalties.

Judge Biggs: These sentences imposed or

whether there were any imposed are matters of public record. Your next witness, please, Mrs. Bouslog.

Mrs. Bouslog: I will call Mr. Cockett, Clerk of the Second Judicial Circuit.

Judge Biggs: Will you be sworn, please?

JOHN B. COCKETT

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows: [203]

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. My name is John B. Cockett, and my position is Clerk of the Second Circuit Court of the Territory of Hawaii.

Q. Mr. Cockett, I show you a red manila envelope marked "Criminal 2412 and 2413, Prosecution's Exhibits A to D." Will you examine that and say whether those are the exhibits in the grand jury challenge case? A. They are.

Miss Lewis: If the Court please, so we won't have any undue interruptions, I would like to have the same general objections to all of the grand jury record and testimony that I filed for the opening of the trial.

Judge Biggs: Very well, we will consider your objection as renewed and going to this entire line of testimony.

(Testimony of John B. Cockett.)

Miss Lewis: Then if there are other objections, we will consider them as additional objections.

Judge Biggs: Very well, you may make them as we go along. Objection overruled, subject to motion to strike.

Q. (By Mrs. Bouslog): I have another envelope marked "Movant's Exhibits 1 to 21." Is that to your knowledge, the exhibits in these cases?

A. That is correct.

Q. (By Judge Biggs): I take it you have inspected these. [204] Mrs. Bouslog has submitted these to you prior to your taking the stand?

A. Yes, I have had them in my possession.

Mrs. Bouslog: He was subpoenaed, your Honor, and brought them with him.

Q. (By Mrs. Bouslog): So that these are to your knowledge the exhibits filed in these cases?

A. That is correct.

Mrs. Bouslog: Your Honor, we are faced with,——

Judge Biggs: Yes, a dilemma as to how you are going to put these records in since they are records of another Court.

Mrs. Bouslog: Here is what counsel for the Plaintiffs has in mind. Some of the exhibits we will in the presentation of our case on the grand jury matter refer to the exhibits in this case. Where the Court already has copies of exhibits, we call the Court's attention to those copies. Some of them are attached to the bill of particulars. Where the

(Testimony of John B. Cockett.)

Court does not have a copy and where we believe it is necessary for the Court to have an understanding, we will offer this and substitute copies so that this Court may have a complete record.

Judge Biggs: Counsel has no objection to the substitution of copies?

Mr. Crockett: No, we haven't. [205]

Judge Biggs: You may reserve your objection as to pertinency.

Miss Lewis: I don't know that I fully understand it, because we have the same problem. We will want to do the same.

Judge Biggs: We have no right to keep the records of another Court.

Miss Lewis: The thing that will come up is that we will have a similar problem. What will be substituted, just as much as the Court feels is necessary for its consideration?

Judge Biggs: The Court is going to have difficulty deciding that at this time. I suppose the matter will have to rest pretty largely in the discretion of counsel and the Court, and we will have to pass on these things as they arise individually.

Miss Lewis: Very well.

Mrs. Bouslog: I have not yet offered these exhibits. What I intend to do is to offer those which the Plaintiffs wish to have in for the consideration of the Court in the case.

Judge Biggs: And you will substitute copies for those?

(Testimony of John B. Cockett.)

Mrs. Bouslog: Yes.

Judge Biggs: Why don't you have the folders marked for identification only? That will help. [206]

Q. (By Mrs. Bouslog): I believe that I did not refer to a document marked Court's Exhibit 1 and 2. That also is from the criminal records?

A. That is correct, in connection with the two criminal records referred to.

Mrs. Bouslog: So we have three envelopes to mark for identification, Movant's Exhibits, Prosecution's Exhibits and Court's Exhibits.

Judge Biggs: I think they might well be marked for identification. 14 is the next number; 14, 15 and 16 for identification.

(Thereupon, the documents referred to were marked Plaintiff's Exhibits Nos. 14, 15 and 16 for Identification.)

(See Court's Exhibit 1, set out on pages 1794 to 1813 and Court's Exhibit 2, set out on pages 1814 to 1833.)

Mrs. Bouslog: They I will want to take them back from the Clerk.

Judge Biggs: Yes, they are only being marked for identification.

Mr. Crockett: At this time, although we intend to call Mr. Cockett later, we have a report of the jury commissioners of persons selected to serve as jurors in and for the Second Circuit, Territory of Hawaii, for the year A.D. 1948, which is certified by the Deputy Clerk of the Court as being a true

(Testimony of John B. Cockett.)

copy of the original. We ask that we be allowed to offer it in evidence.

Judge Biggs: Any objection? [207]

Mrs. Bouslog: Yes, I have, your Honor. I see no relevancy.

Judge Biggs: Do you have any objection to its being offered out of order, reserving your objection as to relevancy?

Mrs. Bouslog: I would suggest that I object to it being offered out of order at this time, your Honor.

Mr. Crockett: The reason I offered it at this time, if the Court please, it is a matter on which we will question Mr. Cockett in connection with other cases, and this probably belongs at this phase of the case.

Judge Biggs: The Court is allowed very wide latitude here in respect to offering exhibits out of order, and we think it would facilitate the proceedings if we receive this now. We overrule the objection as to its being out of order and the objection in respect to relevancy, reserving, however, your usual motion to strike. That will be marked Defendant's Exhibit "D."

(Thereupon, the document referred to was marked Defendants' Exhibit "D" and received in evidence.)

(See Court's Exhibit 1, set out on pages 1794 to 1813 and Court's Exhibit 2, set out on pages 1814 to 1833.)

(Testimony of John B. Cockett.)

Cross-Examination

By Mr. Crockett:

Q. Mr. Cockett, referring to page one of the grand jury,——

Mrs. Bouslog: Your Honor, I object,——

Judge Biggs: Let Mr. Crockett complete his question.

Q. Referring to page one of the list of grand jurors and [208] the name with the number 15 in front of it, Philip P. Gamponia, do you know Mr. Gamponia personally?

Judge Biggs: Don't answer the question, please, until Mrs. Bouslog has had opportunity to state her objections.

Mrs. Bouslog: I object to this as not proper cross-examination, your Honor.

Judge Biggs: I didn't understand you were treating this as cross-examination.

Mr. Crockett: No, it isn't cross-examination, if the Court please. This matter that I wish to question Mr. Cockett on refers to this particular phase of the case, and I thought it would facilitate matters.

Judge Biggs: You are making him your witness for that purpose?

Mr. Crockett: Yes.

Judge Biggs: Any objection to that, Mrs. Bouslog?

Mrs. Bouslog: Yes, he said he was going to call him later. I think it will be more,——

(Testimony of John B. Cockett.)

Mr. Crockett: I will withdraw the question.

Judge Biggs: Very well.

Mr. Crockett: No cross-examination then.

Judge Biggs: I think I should point out, Mrs. Bouslog, that we do expect the utmost degree of co-operation in this. We have no jury present. If we had a jury present we would have to adhere very strictly to the rules and make clear-cut [209] rulings as we go along. This is a much more convenient course both for counsel and the court. Proceed.

Mrs. Bouslog: I have no further questions of Mr. Cockett, unless the Court has some.

Judge Biggs: We have none.

(The witness was excused.)

Mrs. Bouslog: I will call Dr. John Reinecke.

Judge Biggs: How long will his testimony take, please?

Mrs. Bouslog: I think, your Honor, it may take about an hour or more.

Judge Biggs: Then I think we will take our recess. The Court will stand in recess for five minutes.

(Recess.)

DR. JOHN E. REINECKE

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. John E. Reinecke, R-e-i-n-e-c-k-e.

Q. Where do you live, Mr. Reinecke?

A. At 1555 Piikoi Street, Honolulu.

Q. Will you state what your educational background has been?

A. I have a bachelor's degree, an M.A. from the University [210] of Hawaii, Ph.D. from Yale University.

Q. What was your doctor's work taken in?

A. In the field of race relations.

Q. What was your thesis?

A. It was on the sociology of language.

Q. How long have you lived in the Territory of Hawaii?

A. I have maintained my residence here for 21½ years. I have been outside of the Territory about three of those years.

Q. Were those the years you were taking your doctor's degree? A. And studying elsewhere.

Q. During the course of time you have lived in the Territory, what has been your employment?

A. I have been a teacher in the public schools and at the University of Hawaii for seventeen years of my residence here.

(Testimony of Dr. John E. Reinecke.)

Q. During the course of your experience as a school teacher, have you had occasion to observe and study the practices and habits, the ethnic cultures of the islands? A. I have had, yes.

Mrs. Bouslog: If the Court please, Dr. Reinecke's qualifications are set forth in the transcript at pages seven to eight. Unless the Court particularly desires more details as to his qualifications as an expert, we will refer to the pages in the transcript.

Judge Biggs: What is your offer of proof? [211]

Mrs. Bouslog: I am trying to qualify Dr. Reinecke as an expert in race relations in the Territory and in the Ethnic cultures in the Territory.

Judge Biggs: You propose to have him testify respecting those?

Mrs. Bouslog: That is correct, your Honor.

Judge Biggs: In relation to the present case?

Mrs. Bouslog: Yes, and I might say, your Honor that it is not counsel's intention to repeat any of the things that are already in the record. These are matters which were excluded at the time or have since been worked out.

Judge Biggs: It may save time, although the Attorney General is not required to admit qualification at this point. Perhaps it would save time, Mr. Crockett and Miss Lewis, if you indicate the doctor is qualified to testify in respect to ethnic cultures and race relations in the Territory.

Mr. Crockett: We have no objection subject to what we may develop on cross-examination, to per-

(Testimony of Dr. John E. Reinecke.)

haps bring out particular points regarding matters which he may testify to.

Judge Biggs: The Court feels he is sufficiently qualified.

Mrs. Bouslog: I would like the record to note that we would like incorporated at this point what is already stipulated in the record at page seven to eight in regard to particular writings, particular studies that he has made in the [212] past which have been published.

Judge Biggs: That is stipulated into the record?

Mrs. Bouslog: Yes.

Q. (By Mrs. Bouslog): Dr. Reinecke, is there any special custom or practice in Hawaii regarding the ethnic classifications which cuts across the customary anthropological Caucasian and non-Caucasian classifications?

A. There is. In Hawaii I distinguish not on strictly racial lines so much as on lines of national derivation, and it appears that because of the history of Hawaii, the people who are racially Caucasian are divided into two main groups, the haoles, and the Portuguese, Spanish and the white section of the Porto Ricans on the other hand. Until 1940 the census reports broke down the Caucasian population into Portuguese, Spanish, Porto Ricans and other Caucasians, the majority of the other Caucasians being haoles.

Q. Will you define the term "haole" as it is generally accepted in the islands?

(Testimony of Dr. John E. Reinecke.)

A. "Haole" in general means a person of mainland America or of northern European stock. In other words, not a person of Portuguese, Spanish or Porto Rican descent.

Q. (By Judge Biggs): What is the derivation of the word "haole," Doctor? What does it mean in Hawaiian?

A. Originally it meant simply foreigner, but it has acquired this particular meaning. [213]

Q. In other words, it meant originally foreigner, but has acquired a gloss which you have explained?

A. That is true, and the way in which it acquired this gloss is set forth by Romanzo Adams, late professor of sociology of the University of Hawaii, and perhaps the leading expert in his day on racial questions in Hawaii, in his book "Inter-Racial Marriage in Hawaii," published in 1937, pages 114 to 116 and 119. I have excerpted the material, but I think that I have given the gist of it in my testimony already.

Mrs. Bouslog: May I have the excerpt that you have made, Dr. Reinecke? For the convenience of the Court, I will offer that excerpt from Romanzo Adams' "Inter-Racial Marriage in Hawaii," which describes the derivation of the word "haole" and the gloss it has acquired through custom or practice in the Territory.

Judge Biggs: Any objection?

Mr. Crockett: No objection.

Judge Biggs: Admitted as Plaintiff's Exhibit 17.

(Testimony of Dr. John E. Reinecke.)

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 17 and was received in evidence.)

PLAINTIFF'S EXHIBIT NO. 17

Romanzo Adams. Interracial Marriage in Hawaii; A Study of the Mutually Conditioned Processes of Acculturation and Amalgamation. New York: The Macmillan Company, 1937.

"In continental United States the people of the white race take themselves for granted and they classify the others and assign them their place in the social order. They are able to ignore any point of view different from their own. In Hawaii the white people were, for a long time, so few that the Hawaiians, who took themselves for granted, named and placed the other peoples. Of course they had to place [114] the British and Americans near the top, but the name, haole, was Hawaiian and it is best understood from the standpoint of Hawaiian experience. It has been necessary, therefore, in Hawaii for white people to see themselves somewhat as Hawaiians see them. They have accepted the Hawaiian designation, haole, and, of course, it has affected their conception of their role and their behavior.

The word, haole, in the beginning meant stranger or outsider. It did not, at first, refer to color, but since nearly all of the early strangers were white

(Testimony of Dr. John E. Reinecke.)

men it came to be applied in its unmodified form only to white people. . . .

. . . When white men, mainly British and American, came to be somewhat numerous they occupied most of the important professional positions and they were the executives and administrators, the owners of property and the initiators of policy. Of course there were many who occupied positions of minor importance, but even they were better paid than others and the way was more open to them for promotion. Thus the word came gradually to stand for a class of superior economic and social status . . . it is reasonable to assume that the term, haole, was, for a long time, more significant of rank than of race. But as Hawaiians and part-Hawaiians in the more recent times have been learning to speak the English language and, with it, taking over other elements of American [115] and European culture, they are more or less coming to think in terms of race.

It must be emphasized that the term, haole, acquired its meaning from Hawaiian experience and attitudes and that its use has become current among all the other peoples because it stands for something they feel to be unique in the position of this group. As a local classificatory term its meaning is maintained not so much by the haole as by the others. When some of the German plantation laborers won a better economic status the decision whether they were to be regarded as haole lay in part with the

(Testimony of Dr. John E. Reinecke.)

haole who might or might not give them social recognition, but more largely with the Hawaiians and others who might or might not be willing to treat them as haole." [116]

"Among the European immigrants of the nineteenth century the Portuguese were unique in relation to the status achieved. Coming mainly as plantation laborers they did not as promptly improve their status as did the Germans and Norwegians. The Portuguese were much more numerous. Mainly they were illiterate and for a generation they were indifferent to schooling. In general culture they differed more from the haole than did most of the other European immigrants. Because they were numerous and because their status was a humble one for a long time, there came to be a pretty definite mental set in relation to them. That is, they were regarded as a separate people, the 'Portegee.'"

Admitted. [119]

Mrs. Bouslog: Again, your Honor, I will make sufficient copies for the members of the Court at a later time.

The Witness: Resuming my answer to your question, Mrs. Bouslog, I may say that in the rural counties the distinction between haole and Portuguese,—the Spanish, by the [214] way, are very few in numbers,—The distinction between haole and

(Testimony of Dr. John E. Reinecke.)

Portuguese is much more sharply drawn than it is in Honolulu.

Q. (By Mrs. Bouslog): What is the reason for that?

A. It is that the haoles have occupied the leading positions in industry and the professions, while the Portuguese, coming as plantation laborers and having apparent cultures, were much slower in becoming acculturated and being able to take full advantage of the educational and occupational opportunities in the islands, so that they have both regarded themselves and have been regarded as essentially laboring class people. In other words, haole is as much a term of class distinction as it is a term of ethnic distinction, and that attitude comes out rather distinctly in a remark which Mr. Pombo, the jury commissioner, made in the course of his examination. I was going over the transcript and was struck by his remarks.

Judge Biggs: That record is here by stipulation, am I correct?

Mrs. Bouslog: That is correct. I think, if the Court please, Dr. Reinecke is using this particular reference he is making to the transcript as proof of a conclusion that he has drawn that it has economic significance, as well as,——

Judge Biggs: Very well.

A. (Continuing): Mr. Pombo, in the course of his testimony, said, "No, I don't consider a Portuguese a white man. They [215] consider us as

(Testimony of Dr. John E. Reinecke.)

niggers here. We are not classed as white men. They do not even class us as Caucasians, and I told you that yesterday and I would like to have that included that Portuguese are not called Caucasian." Then counsel asked, "Don't you consider yourself?" "I might, but I was taught when a boy that I am not a Caucasian, I was a Portuguese, and I am going to stick to it, and I am proud of it."

Q. What is the page number of that?

A. That page is 340, and again on page 267 Mr. Pombo was asked, "What do you mean white persons?"

Mr. Crockett: If the Court please, might I interrupt the witness. All this reference to Pombo is certainly not material to the issues of this case.

Judge Biggs: We are not certain that it is material, but we think it is largely preliminary.

Mrs. Bouslog: That's right, your Honor.

Judge Biggs: We will overrule the objection.

Mrs. Bouslog: Mr. Pombo is a jury commissioner.

Judge Biggs: It is subject to motion to strike. We might say in regard to any question respecting a motion to strike, the Court of course reserves to itself the right to strike any testimony which we deem immaterial. Will you answer the question?

A. Mr. Pombo was asked, "What do you mean white persons?" I beg your pardon, he was answering. He said, "What do you [216] mean white persons? Portuguese is not considered white in

(Testimony of Dr. John E. Reinecke.)

Hawaii." Then he was asked, "Portuguese are not considered white in Hawaii?" "Yes, I am not considered white. I am classed with the Hawaiians and the part Hawaiians and the Chinese and am perfectly satisfied." Then he was asked, "Do you consider yourself white?" "Yes, but the haoles here don't." That gives the attitude of one of the leading Portuguese citizens of Maui County regarding his own ethnic position in the community, and I believe that one has to take into consideration the difference drawn socially between haoles and Portuguese and Spaniard in the community.

Q. (By Judge Biggs): When you say "socially" you mean the word in its broader sense, sociologically, do you not?

A. I do, yes, I do. Then there is another distinction which I should like to make. Here in Hawaii all people having any Hawaiian ancestry whatever are called "part Hawaiians" unless they choose to call themselves "full-blooded Hawaiians." Naturally the part Hawaiian group which appears in the census contains people who are predominantly of Hawaiian blood and who follow a number of the old Hawaiian customs. It also includes people who are indistinguishable biologically and socially from the haoles or the Portuguese or the Chinese, and it includes a number of people, of course, in between. Now a certain number of the people of Caucasian-Hawaiian blood and particularly of haole-Hawaiian blood occupy positions [217] in the

(Testimony of Dr. John E. Reinecke.)

community which are hardly distinguishable from those occupied by the haoles. They are on the next step below the haoles socially and economically. Then there are a number, as I said, who are two or three steps down. I think that these facts have to be taken into consideration in fully understanding the tables that were presented.

Q. (By Mrs. Bouslog): Is there any particular explanation of a Caucasian-Hawaiian as distinguished from some of the other racial combinations with persons of Hawaiian blood?

Mr. Crockett: If the Court please, may I object to the question as wholly immaterial, because the only question that was raised here was that there was discrimination against the Filipinos. It seems to me it is immaterial, although it is interesting, but it is immaterial as to how the Caucasian-Hawaiians fit into the picture here or how the Portuguese fit into the picture, because there is only one issue here, and that is whether or not Filipinos were discriminated against and whether or not that discrimination can be shown, so I submit why waste the time of going into this interesting discussion, this ethnological discussion which Dr. Reinecke is very well qualified to discuss?

Judge Biggs: Mr. Crockett, I think you must view this from the point of view of two of the judges who are from the mainland and who are strangers here. I am not at all certain that even if the counsel for the Plaintiffs were to admit [218]

(Testimony of Dr. John E. Reinecke.)

that claim as to discrimination went only to the members of the Filipino race that we could deal with this subject without the background. Now, we will try to restrict it as far as possible, but I think we had better go ahead along this line even if it wastes time and even if it is immaterial.

A. Mrs. Bouslog, I have not quite finished answering the question. There is one more point which I should like to make. In the census reports of 1910, I believe, certainly of 1920 and 1930, all the Caucasians who were not included as Portuguese, Spaniards or Porto Ricans were called "Other Caucasians." Now, as I mentioned in passing "Other Caucasians" is not quite synonymous with haole because a person, who for example, had an English father and a Portuguese mother, or a Portuguese father and a Spanish mother, might be called "Other Caucasian." Now, incidentally, if a person who is of north European and Portuguese mixed ancestry, a person of mixed ancestry north European and Portuguese, may be classed socially as a haole or as a Portuguese, depending on his family circumstances.

Q. I was asking particularly about Caucasian-Hawaiians, whether or not sometimes their classification cuts across the haole, non-haole axis of ethnic classification in the islands.

A. To a certain extent it does. That is, a small number of Caucasian-Hawaiians are not regarded as ordinary Hawaiians by the majority of the popu-

(Testimony of Dr. John E. Reinecke.)

lation. They may be subject to a [219] slight discrimination on the part of haoles of unmixed blood.

Q. (By Judge Biggs): When you say "Caucasian-Hawaiian" do you mean a person of pure Caucasian blood who has been born in Hawaii?

A. No, your Honor.

Q. You mean a person who has a Caucasian mother and a Hawaiian father, or vice versa?

A. Yes, or in most cases much more Caucasian than Hawaiian blood, in the instance to which I am referring.

Judge Biggs: Very well.

A. (Continuing): There are a few cases of individuals who are hardly regarded even as part-Hawaiians by the mass of the population, although haoles who are very snobbish may bear in mind their Hawaiian blood. However, because of the advantages enjoyed by the father usually these people have much better standing in the community and many more economic advantages than the average part-Hawaiian.

Q. (By Mrs. Bouslog): What evidence do you have that haoles, as you have used the term here, actually do occupy superior positions in the Territory and particularly in Maui County?

Mr. Crockett: If the Court please, we would like to ask that that question be made a little more definite. She says, "Occupy more superior positions." There are several fields the witness testified to, the social field, economic and political field, busi-

(Testimony of Dr. John E. Reinecke.)

ness field. The question is indefinite [220] in that respect.

Judge Biggs: I am not quite sure in what sense the witness is using the word "Social." When you say "Social," you mean sociological, do you not? Not whether A is invited to B's party or whether or not A will associate with B, but you really mean it in the economic sense, don't you?

A. I mean it primarily in the economic sense, although of course the invitations to dinner somewhat reflect ones economic position largely.

Judge Biggs: Well, I think the question could be made more definite, Mrs. Bouslog. We will sustain the objection.

Q. (By Mrs. Bouslog): What evidence do you have that the haoles as you have defined the term are engaged in occupations in the community of a more remunerative nature than the non-haoles?

A. I have first the occupational index of Caucasians in general in the Territory. Now it is well known that the majority of haole working men reside on the Island of Oahu, while on the three outlying counties there are relatively few haole working men. This occupational index,—I believe that you have a copy, Mrs. Bouslog,—will show the preferred position occupied by Caucasians in general in 1940. Now Caucasian includes both haole and Portuguese. If the haoles had been distinguished from the Portuguese in the census classifications, the occupational index for professional workers,

(Testimony of Dr. John E. Reinecke.)

semi-professional workers, proprietors, managers and officials, clerical, sales and similar workers, craftsmen, foremen and similar workers, would have been very much higher indeed for the haoles than they are for Caucasians in general. Also, if a similar list could be drawn up for Maui, it would show that the haoles in the County of Maui occupy a very much more advantageous position in general than the haoles in the Territory generally, including Honolulu. Now if one takes the lists of executives on the plantations and in other large businesses or branches of large businesses in Maui County, one finds that invariably the top positions are occupied by haoles. The secondary positions are occupied by haole-Hawaiians, that is people of mixed haole and Hawaiian blood, and in a very few cases by Portuguese. The staff personnel of the sugar plantations on Maui has not changed greatly in the past seven or eight years, and going through Gilmore's Hawaii Sugar Manual for 1938-1939, I find that of the staff personnel who are named.——

Mr. Crockett: Just a minute. May I object to that line of testimony referring to matters in 1938 and 1939 and also the witness's statement that the personnel has not changed greatly in these past years as being a conclusion for which no foundation is laid.

Judge Biggs: You may bring that out on cross-examination. The manual to which the witness refers, is that a [222] standard manual? Do you have a copy of it with you?

(Testimony of Dr. John E. Reinecke.)

The Witness: I have a copy. It is a standard manual.

Q. (By Judge Biggs): Published by whom?

A. By A. B. Gilmore, publisher.

Q. You had a copy?

A. This is the University Library's copy.

Judge Biggs: May we look at it a moment?

(The witness hands document to the Court.)

Judge Biggs: Would you state your objection again, please?

Mr. Crockett: The objection, if the Court please, goes to the fact that the witness is making certain statements there and directly to the effect that there has been no change during the past six or seven years, and thereby trying to connect that up with the Manual published in 1938 or 1939. The Court certainly knows that conditions have materially changed in those years, as the testimony before the Court produced by the plaintiffs themselves show, —to the effect that great changes have been made due to the fact that the unions themselves have come into the picture within the past four or five years, and other changes which the Court will take judicial notice of,—the fact that the conditions here have changed materially, due to the fact that a war was fought, and I submit, if the Court please, that this witness should at least lay a foundation for his conclusion that there have been no changes, since 1938 and 1939, in a period of six years.

Judge Biggs: Is this their last manual?

(Testimony of Dr. John E. Reinecke.)

Witness: It is, your Honor.

Judge Biggs: None has been published since that date?

Witness: No, none has been published since that date. However, I recognize the name of——

Judge Biggs: Just a minute. The Court is of the [224] opinion that the question is one of materiality; it goes only to the weight and it is a matter which may be developed on cross-examination. We overrule the objection, and reserving the motion, as to materiality. Proceed, please.

A. Of the staff personnel on the five plantations, on the island of Maui, the sugar plantations, of the staff personnel who are named, 105 men bear haole names, although a few of those may be of mixed Hawaiian blood.

Q. (By Judge Biggs): Now, Doctor, is that any evidence,—names? In the course of my few days here I have seen maybe a man who seemed to be of pure Hawaiian blood who had a purely Irish name. I have forgotten what it was, but it was a name, with all deference to the islands, that was as Irish as paddy's pig. Can you tell from names? Is that any real test?

A. It is when combined with the position one holds. If I find a man named A. F. Baldwin is manager of Maui Agricultural Company, I am sure that he is a man of unmixed white descent.

(Testimony of Dr. John E. Reinecke.)

Examination

By Judge Biggs:

Q. That is because you know a man named Mr. Baldwin, isn't that it?

A. I don't know him personally.

Q. But you know who it is?

A. I know through the family.

Q. My remarks about the Irish are said with good faith, because I am quarter-blood Irish myself, and nothing invidious [225] can be taken from that, but isn't that a question of it being a case where you actually know the man?

A. One has to know something of the family system of these people's names, and I have looked over the list of executives of the island of Maui, so that I think that I can tell within 5% who are haoles and who are not.

Q. You mean to say your percentage of error would be higher than 5%?

A. I don't think it would be higher than 5%.

Judge Biggs: Very well. Continue.

A. Then 18 have what might be called non-haole names,—Portuguese, Japanese and Chinese.

Q. Now to come up to date, take the annual report of the Maui Agricultural Company, Limited, for 1947, which lists the production staff, and I find that with one exception the department heads, as well as the higher executives, have Caucasian names; that is non-Portuguese Caucasian names. The exception is the warehouse superintendent, who has a Japanese name.

(Testimony of Dr. John E. Reinecke.)

The Pioneer Mill Company's annual reports for 1947 also list the top people, and I find that again without exception everyone is a haole name, though there is one gentleman here who I think is of Hawaiian blood, and while we don't have the annual reports of the other plantations on the island at hand, I believe that they would show the same [226] general picture.

Mr. Crockett: If the Court please, may I ask the witness to let me see the M. A. Company annual report, and the Pioneer Mill.

(Documents handed to counsel.)

Mr. Crockett: Thank you.

Judge Biggs: Mrs. Bouslog, are you going to introduce these documents in evidence?

Mrs. Bouslog: We can if the Court desires us to do so.

Judge Biggs: Do you have any other copy of Gilmore's available.

Mrs. Bouslog: We will procure a copy that does not belong to the libraries.

Judge Biggs: I presume it would be found in most of the large libraries of the United States, would it not,—such as the San Francisco Public Library?

Witness: I think so.

Judge Biggs: These others are pamphlets, and I assume that you can procure other copies of them?

Mrs. Bouslog: Yes, your Honor, I believe the ones we have belong to the union, but I imagine

(Testimony of Dr. John E. Reinecke.)

other copies could be procured for the use of the Court.

Judge Biggs: Are you willing to offer them?

Mrs. Bouslog: Yes, your Honor. [227]

Judge Biggs: I think they should be admitted as one exhibit, and a copy of Gilmore. Do you have a copy of Gilmore, Mr. Crockett?

Witness: Yes, here it is, your Honor.

Judge Biggs: Let the record show that it is the Hawaii Sugar Manual, by A. B. Gilmore, Publisher: A. B. Gilmore, 1939, 1805 Queen and (Gearsen) building, New Orleans, Louisiana. I assume that counsel would have no objections to treat this as being introduced in evidence, even though the book is not physically present, and the Court would have the right to inform itself from the volume, procured from any standard library in the United States.

Mr. Crockett: No objection, if the Court please.

Judge Biggs: We will have them all marked as one exhibit number. They can be marked now, and then taken back. Everything will be marked with one exhibit. Perhaps the University might object to having the exhibit number on here. They have a University number. Are there any other documents there?

Mrs. Bouslog: Yes. Before we leave this:

Q. Dr. Reinecke, you refer to an occupational index by race for the Territory of Hawaii for 1940, and I believe the defendants have a copy of it. It

(Testimony of Dr. John E. Reinecke.)

was marked for identification in the case before Judge Cristy, but not received in evidence.

Mrs. Bouslog: I also offer that, and ask to [228] add that to the exhibits, as being part of the basis of the testimony of this witness.

I will also call the Court's attention that table 3, already in evidence, shows for Maui County, of the Territory, that shows for Maui County the distribution of percentages of population for all groups such as professional workers, semi-professional workers, clericals, and so forth. That table, your Honor, is attached to the bill-of-particulars and is marked Movant's Exhibit Number 7 in evidence,—Table 3.

Judge Biggs: Any objection, except on the ground of relevancy, to it being so marked?

Mr. Crockett: That is all, if the Court please.

Judge Biggs: Very well. The objection is overruled. The next number is 18, and I would suggest they all be marked. I would put them all in a folder and marked on the folder, as Exhibit 18. It will save marking the book, which can be returned by the witness.

What is that Lahaina annual called?

Mr. Crockett: They are the Maui Agricultural Company, and the Pioneer Mill Company's annual reports.

(Various documents referred to as above, are received, placed in an envelope, and the envelope is marked: "Plaintiffs' Exhibit Number 18.")

(Testimony of Dr. John E. Reinecke.)

PLAINTIFF'S EXHIBIT NO. 18

Here's Your Annual Report, Maui Agricultural Company, Ltd. 1947.

What Made the Harvest of 1947

Labor

One of the outstanding contributions to the harvest of 1947 was the desire of everyone to do a job. Workers and management worked together as a team.

Problems arose, of course, from the conversion of perquisites into wages. Both workers and management expected these but neither of us realized how difficult they would be. Perquisites—housing and medical service—had been a custom since the founding of the industry.

The change was a major one in the life of the community.

The theory of the new system is this: The worker receives his full pay in money wages. He does not receive part of it in money and part of it in housing and medical services as he did under the perquisite system. He pays rent, and a monthly fee for himself and his family.

We—management and workers—were anxious to give our people an increased feeling of independence.

But the sudden change was hard to absorb. New values were created. Old values were destroyed. To management it meant additional costs and book-

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

keeping. To older workers, and workers with large families, it meant a difficult economic adjustment.

The conversion is not yet complete. In the interests of our workers and the community, the plantation has found that it must still help to pay for housing and medical services. This is beyond what the worker pays in rent and medical fees.

Nevertheless, we have worked together with friendliness to accomplish this major readjustment.

* * *

The relationship between the worker and his immediate supervisor received top consideration in our Industrial Relations program during the year.

Discussion groups with supervisors were held to talk over problems and to work out ways to handle on-the-job personnel matters. Top management and the supervisory force worked closely to enable the supervisor to do a better job of carrying out the policies of the company.

* * *

Enactment of the Taft-Hartley Act required no changes in the policies of our company and had no effect on our good labor relations.

Weather

Rainfall, although not plentiful, was well distributed over our lands. This, coupled with improved irrigation methods, kept crops in good condition.

During the year 31,946 million gallons of water came by ditch from the East Maui watershed, and 8,980 million gallons were pumped.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Trucking

Trucks began to replace cane cars in our fields for hauling cane to centrally located transfer stations. There the cane was dumped into "Main Line" railroad cars and pulled to the mill. Twenty-four percent of the cane harvested was hauled by truck.

The speed and ease of truck operation resulted in a decision to truck all cane in 1948.

Weed Control

Numerous tests to kill weeds before they grew were carried out during the year. In the past, weeds had been killed after they sprouted. In 1947, however, a plant hormone was found to be effective even on clean fields. Weeds, especially hard grasses, were killed before they came out of the ground.

Dusting this new chemical on crops by airplane was tried successfully. More research on airplane spraying will be done in 1948.

Consolidation

The Directors of our company decided in September, 1947, to recommend to stockholders, a consolidation with the Hawaiian Commercial and Sugar Company, Ltd. The consolidation, which is expected to become effective in March, 1948, if approved, will create the largest single cane producing unit in the United States and incorporated territories.

Future Crops

Bigger yield for next four years if 1947 teamwork continues.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Nineteen forty-seven set the pace for greater M. A. Co. production in the future. Our sights are trained on a goal in 1951 of 53,400 tons of sugar. That's our plantation's share of the 1,052,000 ton allocation under the Federal Sugar Act of 1948. Although the 1948 crop was hard hit by the 1946 strike, production is estimated at a little more than this year's yield.

In 1949, however, we expect to jump ten thousand tons to an estimated 46,000. The following year, 1950, we anticipate our production will be up to 51,000 tons. The banner year will be 1951 when production is expected to reach 53,400 tons of sugar.

The 1951 goal can be met with continued 1947 teamwork. Prospects are excellent. New cane varieties have been developed. New planting and weeding techniques have been adopted. Irrigation has been improved. Labor relations have been good.

Here are estimates of future yields:

	1948	1949	1950	1951
Total acres	3,694	4,222	4,300	4,469
Plant	2,198	1,767	1,891	1,592
Ratoon	1,496	2,455	2,409	2,877
Tons cane	288,038	379,177	390,902	430,989
Tons sugar 96°	36,887	46,445	51,611	53,639

	1948	1949	1950	1951
T/C/A	77.98	89.80	90.89	96.42
T/S/A	9.985	11.00	12.00	12.00
T/C/TS	7.808	8.164	7.574	8.035
Average age mo.	22.00	24.00	24.00	24.00
TS/A/M	.454	.458	.500	.500

Our share of Hawaii's sugar allotment is 53,400 tons. We estimate the goal will be met in 1951.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Although the 1948 crop was hard hit by the 1946 strike, a good yield is expected. All crops are now in fine shape, particularly the 1949 crop.

MAUI AGRICULTURAL COMPANY, LTD.

A director and officer of M. A. Co. is R. G. Bell. Mr. Bell, who is a vice-president of our company, is general manager of Alexander and Baldwin, agent for the plantation.

Directors: A. F. Baldwin, F. F. Baldwin, R. B. Bell, E. Brenner, Jr., J. W. Cameron, J. P. Cooke, J. F. Morgan, J. T. Waterhouse, C. B. Wightman.

Officers: A. F. Baldwin, Pres.; J. P. Cooke, Vice-Pres.; R. G. Bell, Vice-Pres.; B. C. Wightman, Vice-Pres.; J. F. Morgan, Treas.; J. T. Waterhouse, Sec.; A. H. Gorie, Asst. Treas.; F. E. Steere, Jr., Asst. Treas.; D. L. Oleson, Asst. Sec.

Manager: Asa F. Baldwin.

Charles R. Hemenway and William Pullar died during year (directors).

MAUI AGRICULTURAL COMPANY, LTD.

Production Staff

A. F. Baldwin, Manager F. C. Churchill, Assistant Manager

Field

W. L. Doty.....Field Superintendent, Harvesting & Machinery
A. D. Waterhouse.....Field Superintendent, Irrigation & Agricultural Control
A. D. Woolaway....Field Superintendent, Cultivation & Planting
W. P. Burns.....Irrigation Overseer

Overseers

L. De Cambra.....Hamakuapoko Division
W. L. Roach.....Paia Division
W. A. Bates.....Keahua Division
A. Fernandez, Acting.....Pulehu Division

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Production Staff (Continued)

M. Souza	Harvesting Field
L. Ferreira	Planting Field
G. Coleman	Field Mechanical Equipment

Supervisors

P. Gonsalves	Water Foreman
J. Arakawa	Water Foreman
A. C. Ferreira	Water Foreman
T. Endo	Water Foreman
S. Okuda	Water Foreman
A. Shishido	Water Foreman
S. Takahashi	Water Foreman
J. Alexander	Water Foreman
John Abreu	Cultivation Supervisor
H. Borge	Cultivation Supervisor
J. Medeiros	Cultivation Supervisor
M. Lopes	Cultivation Supervisor
A. Camara	Cultivation Supervisor
K. Takahashi	Cultivation Supervisor
S. Ishikawa	Cultivation Supervisor
H. Yamada	Cultivation Supervisor
A. Tavares	Cultivation Supervisor
R. Araula	Cultivation Supervisor
L. Eaton	Cultivation Supervisor
J. Lopes	Cultivation Supervisor
J. C. Medeiros	Cultivation Supervisor
M. Rabara	Cultivation Supervisor
M. Nako	Cultivation Supervisor
M. Inouye	Cultivation Supervisor
T. Takahashi	Cultivation Supervisor
M. Fernandez	Cultivation Supervisor
H. Abreu	Cultivation Supervisor
C. Byrd	Cultivation Supervisor
P. Cooper	Cultivation Supervisor
J. R. Abreu	Cultivation Supervisor
L. Paresa	Cultivation Supervisor
I. Nogami	Cultivation Supervisor
M. Ortiz	Seed Cutting Supervisor
R. Kobayashi	Plant Field Supervisor
T. Kokubun	Plant Field Supervisor
M. Tanimoto	Plant Field Supervisor
M. Takaki	Fertilizing Supervisor
D. Oshiro	Agricultural Control Supervisor
M. Vierra	Harvesting Field Supervisor
A. Medeiros	Harvesting Field Supervisor
E. Medeiros	Harvesting Field Supervisor
M. Cabos	Harvesting Field Supervisor

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Production Staff (Continued)

R. Takasugi ..... Head Irrigation Ditchman
A. Jardine ..... Rake Harvest Supervisor
M. Boteilho ..... Mechanical Weeding Supervisor
Y. Nishimura ..... Cane Loading Supervisor
L. Silva ..... Tractor Maintenance Shop Supervisor

Factory

J. P. Foster ..... Factory Superintendent
F. G. Manary ..... Mill Engineer
A. A. Kruse ..... Chemist and Processing Superintendent
George Melancon ..... Sugar Boiler
R. Bradley ..... Electrical Superintendent, Power & Pumps

Assistants (Factory)

S. A. Sniffen ..... Machine Shop Foreman
H. W. English ..... Repair Garage Foreman
George Nunes ..... Blacksmith Foreman
H. W. Otte ..... Factory Maintenance & Repair Foreman
A. Pico ..... Cane Car Repair Foreman
C. G. Trist ..... Pumps Department Foreman
K. Sumida ..... Assistant Chemist
W. Pico ..... Lime Kiln Foreman
T. Shishido ..... Electric

Supervisors (Factory)

A. Coelho ..... Milling Department Supervisor
H. Nitta ..... Milling Department Supervisor
T. Yoshimi ..... Milling Department Supervisor
J. Ambrose ..... Boiling House Supervisor
A. Amadeo ..... Boiling House Supervisor
T. Ogawa ..... Boiling House Supervisor

Construction

V. O. Morrison ..... Construction Engineer
M. Cabrinha ..... Building Maintenance Foreman
J. Matsubara ..... Office and Shop Foreman
M. Tanaka ..... Construction Foreman
Dan Nahaku ..... Plumbing Shop Foreman
K. Tanimoto ..... Surveyor

Industrial Relations

R. F. Sheffield ..... Industrial Relations Manager
R. E. Gill ..... Personnel Director
A. R. Costa ..... Supervisory Relations Director
J. Crouse ..... Recreation Director
F. Boteilho ..... Personnel Assistant
W. E. Foster ..... Safety Director

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Production Staff (Continued)

Accounting

L. Bisset ..... Office Manager
C. W. Gerner ..... Bookkeeper and Cashier
R. S. Gannon ..... Accountant
R. H. St. Sure ..... Payroll Department Head
P. G. Robertson ..... Field Auditor
T. Abe ..... Maintenance Record Department

Warehouse

E. P. Jijine ..... Warehouse Superintendent
J. Takakura ..... Warehouse Bookkeeper

Transportation

S. O. Hornbuckle ..... Automotive Maintenance & Repair Superintendent
H. R. Filler ..... Truck and Stable Superintendent
H. K. Scott ..... Locomotive Department Head
E. Citra ..... Stables Foreman
J. B. Perreira ..... Trucks Foreman
M. Coelho ..... Locomotive Department Foreman
Y. Takeshita ..... Track Maintenance Supervisor
S. Tsukuda ..... Track Maintenance Supervisor

Medical

F. A. St. Sure, Jr., M. D. ..... Hospital Administrator & Head Physician
J. Sanders, M. D. ..... Physician
R. F. Cole, M. D. ..... Physician
Mrs. L. Coughlin ..... Supt. of Nurses

Ranch

T. L. Liggett ..... Ranch Manager
S. Abrew ..... Ranch Foreman

MACo. Stores

A. Moodie ..... Manager
T. E. Dye ..... Office Manager and Bookkeeper
J. Dolim ..... Keahua Branch Store Manager
D. Shigeta ..... Haliimaile Branch Store Manager
J. V. Medeiros ..... Hamakuapoko Branch Store Manager
H. Matsumoto ..... Wholesale Department Head
B. J. Ambrose ..... Grocery and Hardware Department Head
J. Perreira ..... Dry Goods Department Head
M. Carreira ..... Refined Sugar Sales Head
J. Feiteira ..... Delivery Department Supervisor
H. Morikawa ..... Men's Furnishings Supervisor
M. Matsumoto ..... Hardware Department Supervisor
S. Tanaka ..... Service Station Manager

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Production Staff (Continued)

M. Freitas ..... Meat Market Manager
H. Tsuji ..... Assistant Bookkeeper
M. Nakano ..... Price Accounting
Y. Shoda ..... Warehouse Supervisor

Factory Division

Lahaina Baldwin Packing Co., Ltd.

1946

1. D. T. Fleming ..... Manager
2. B. L. Fleming ..... Superintendent
3. Lowrie ..... Assistant Superintendent
4. James Bright ..... Warehouse Superintendent
5. Lawrence T. Sakai ..... Engineer
6. Francis K. Izumi ..... Assistant Engineer
7. Shoon Tet Hew ..... Table Foreman & Personnel
8. Charles Shigihara (Alien) ..... Purchasing Agent & Supply Room
9. Walter Kozuki ..... Warehouse and Label Clerk
10. Tom T. Suzuki ..... Night Shift and Paint Head
11. S. Nakai ..... Platform Foreman
12. Bob K. Yoschimura ..... Leading Electrician
13. Kikuji Okada ..... Cook Room Foreman
14. Yoshito Horiuchi ..... Beverage Juice Foreman
15. Noboru Horiuchi ..... Crush Dept. Foreman
16. Tadao Fujiyoshi ..... Can Testing Foreman
17. Yoshimatsu Yabui (Alien) ..... Construction Foreman
18. Fred Yoshiharu Yabui ..... Modified Juice Foreman
19. Miss Kikue Harada ..... Dispensary Attendant
20. Miss Humiko Yoshimoto ..... Personnel Dept. Clerk
21. Mrs. Haruyo Yamada ..... Head Forelady (Sliced)
22. Mrs. Katie Keao ..... Head Forelady (Trimming)
23. Mrs. Dazon ..... Forelady
24. Mrs. Emma Kahahane ..... Forelady
25. Mrs. Teraguchi ..... Forelady
26. C. W. Ashdown ..... Office Manager
27. Edwin Bowmer ..... Cashier
28. Mrs. Evans ..... Steno. to Manager
29. Mrs. Burns ..... Head Timekeeper (On Vacation)
30. Mrs. E. Voedroft ..... Head Timekeeper (Temporary)
31. Miss Teruko Kajihara ..... Office Clerk
32. Miss D. Lintao ..... Office Clerk
33. Herbert Eberly ..... Empty Can Foreman
34. The following Maybe on our side
    H. T. Kido ..... Office Statistic
35. Mrs. Elinore Taketa ..... Asst. Timekeeper

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

The following Lunas are on our side:

36. Haruo Kato (Alien)....Casing, Labeling & Shipping Foreman
37. Mariano Bangi (Alien).....Warehouse Foreman

Agricultural Division—Honolua

1. Russell .....Field Superintendent
2. Adam Scott.....Asst. Superintendent & Ind. Rel.
3. E. S. Burns.....Truck Dept. Superintendent
4. D. A. Fleming.....Field Mech. Implement Head
5. Miss Kazuko Mitsui.....Office Clerk
6. Shuji Seki .....Personnel
7. Seki (Alien) .....Store Manager
8. Himori .....Store Clerk
9. Ikeda .....Store Clerk

On the Field Division the list may not be complete as their list have not come in as yet.

ANNUAL REPORT
1947
PIONEER MILL COMPANY, LTD.

Manager's Statement

Water Supply and Weather

Although rainfall on both watershed and field area was considerably less in 1947 than during the year previous, the distribution throughout the year was better. As a result, mountain water ditch flow averaged 47.04 million gallons daily or 1.85 million gallons higher than for 1946. Net use of mountain water was 41.46 mgd, the best since 1943. Unavoidable waste during stormy weather averaged 5.58 mgd. Pumped water requirement was decreased due to better mountain water flow. An average of 32.61 mgd was pumped with net use averaging 23.61 mgd, the lowest figure in many years.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

1947 Crop

This crop, in which harvesting began February 3, 1947, and was completed on October 16, 1947, suffered quite a good deal as a result of the unfortunate strike in 1946 as is shown by the reduction of 4.54 tons of Cane per Acre and the loss of .82 tons of Sugar per Acre in the tabulations below:

	Acres	Tons Cane	T.C.P.A.	Tons Sugar	T.S.P.A.	TC/TS	Age
Plant Cane	857.2	63,360.09	73.92	7,592.14	8.86	8.35	25.32
Long Ratoon ..	3,027.4	209,967.81	69.36	24,932.92	8.24	8.42	25.59
Short Ratoon..	34.0	1,682.61	49.49	178.42	5.25	9.43	16.37
Total	3,918.6	275,010.51	70.18	32,703.48	8.35	8.41	26.22

1948 Crop

The crop average for this year is small due to area lost out of the cycle as result of the 1946 strike. As we noted last year, "time lost in growing crops is gone forever and the inability to maintain field crops will be felt for years to come." When we were forced to stop operations on the 1946 Crop only 2,962.9 acres had been started for the 1948 Crop. However, by juggling areas scheduled for future crops, through short ratooning and short planting, we were able to build up some 400 acres more into the 1948 Crop for a total now to be harvested of 3,363.7 acres. Of this 1,500.1 acres are Plant, 1,718.9 acres are Long Ratoon and 144.7 acres are Short Ratoon. Such practice is not good agriculture but necessary in emergency. Naturally the lack of proper irrigation, extreme weediness and improperly timed fertilization will depress yields. We ex-

Plaintiff's Exhibit No. 18 (Continued)

pect to take off between 31,400 and 32,000 tons of sugar from this crop. Harvest started on January 8, 1948, and good progress was made up to the last week of January when the heaviest rain storm in many years forced us to shut down for a week. This will be the first crop since 1921 with no H-109 Variety in it. The famous old cane has been entirely replaced in this crop by 2,556 acres of 32-5860, 587 acres of 37-1933 and the balance by other canes on trial.

1949 Crop

A total of 3,836 acres scheduled for this crop consists of 606.9 acres of Plant Cane, 60.3 acres of Short Plant, 2,907.1 acres of Long Ratoon and 261.7 acres of Short Ratoon Cane. This area represents the best we could accomplish after readjusting cropping cycles for 1947 and 1948 Crops. Cane for this crop started in 1947 has progressed well and should produce between 35,250 and 36,000 tons of sugar. It is made up of 2,631 acres of 32-8560, 312 acres of 37-1933, 156 acres of 38-2915 and several other varieties on small acreages.

Subsidiaries

The Lahaina Ice Company, Limited expanded its facilities at the beginning of 1947 by the purchase of Pioneer's existing distribution system and now serves all employees. In mid-year it took another big step by divesting itself of the Ice and Cold Storage, Soda Water and Ice Cream business. This brought about the change in its corporate entity

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

and a change in name to Lahaina Light and Power Company, Limited. These steps were entered into after careful and deliberate consideration. As always, the means of best serving the needs of the community were given paramount attention. It is felt that these ends can best be served by the new organization. An agreement was reached with the Baldwin Packers, Limited whereby the company will serve both their Cannery Camps and the Honolulu area as soon as the transmission line can be completed.

General

Our force of adult male, unskilled employees numbered 822 at December 31st. Performance has been steady and turn-out good.

Difficulties in procuring equipment for land clearing were not overcome until after the middle of the year. However, with such equipment as we had, we cleared 503 acres for mechanical field work and harvesting. Of this area, 327 acres were in cane, cleared after harvest, and put back in cane so that only the balance of 176 acres came from previously fallowed area. Discard of additional area during the year brought our net gain of area in cane up 166.9 acres. At the close of the year land in cane was 6,904.5 acres, land in fallow 2,803.3 acres for a total of available cane land of 9,734.8 acres.

Our future hinges on the return to cane of much of the fallowed area in the fastest time possible. We had planned to clear at least 400 acres a year

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

and have attained that aim. However, with the serious drop in sugar returns we must endeavor to double this rate to 800 acres a year. To this end we are now endeavoring to acquire sufficient, suitable additional equipment. We believe we can accomplish this by June 1st.

High labor and material costs affecting present day operations make it imperative that we increase sugar production by increasing area in cultivation. At Pioneer the land discarded to fallow was so rocky that it had to be operated entirely by manual labor. It was discarded progressively with the loss of hand labor during the war. Now, to put it back in use we must clear it of rocks until it can be prepared, planted and harvested mechanically. Hand labor is not available, and, if available would be excessively costly on a permanent basis. The task is a gigantic one but we now know it can be done with excellent results. The cane growing on the areas already cleared and planted is doing splendidly and will break all records for those fields.

Our concrete pipeline irrigation system is operating well. During the year improved use of potential capacity brought a notable increase in area irrigated per man day. The average for January, 1947, was 6.34 acres per man day. The performance steadily improved to an average for December, 1947, of 9.47 acres per man day and an average for the year of 7.87 acres per man day. This result is most satisfactory. It is of interest to note here that

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

the average man day accomplishment for the year 1934, before any pipeline system was installed, was 1.42 acres.

Formalized Retirement Annuity and Group Life Insurance Plans were offered employees in November. Under the Annuity Plan 90.95 per cent of the 950 employees eligible accepted and under the Group Life Plan 83.06 per cent accepted. Both plans were made effective in December. The plans are insured joint contributory plans.

It is with deep regret that we record the death of Mr. W. H. McInerny, a member of our Board of Directors. His service to the Company was outstanding and will be deeply missed.

Supervisory Staff
As of December 31, 1947
John T. Moir, Jr., Manager
L. M. Van Dreser, Asst. Manager

Agricultural

H. I. Seebart	Field Superintendent
C. J. Willett	Harvesting Superintendent
W. C. Reichardt	Cultivation Overseer
W. K. Buchanan	Division Overseer
H. P. Robinson, Jr.	Division Overseer
J. H. McCarthy	Division Overseer
H. D. Wright	Division Overseer
K. Sakamoto	Relief Division Overseer
J. Vierra	Field Asst. Agriculturist
H. Aotaki	Foreman, Weed Spray
R. Tanaka	Chief Clerk
T. Watanabe	Spray Gang Luna
T. Ono	Spray Gang Luna
M. Nakamura	Spray Gang Luna
M. De Mello	Senior Water Luna
J. De Mello	Water Luna
M. Nunes	Water Luna
U. Yamaguchi	Water Luna

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

K. Tamura	Water Luna
K. Ito	Water Luna
J. Kaukau	Water Luna
P. Lasponia	Water Luna
K. Kubo	Water Luna
T. Omura	Water Luna
M. Aotaki	Water Luna
B. Silva	Water Luna
A. Dela Cruz	Field Gang Luna
S. Clarion	Field Gang Luna
J. Arcangel	Field Gang Luna
H. Watanabe	Field Gang Luna
T. Higuchi	Field Gang Luna
E. Balinbin	Field Gang Luna
J. Martin	Field Gang Luna
A. Fujishiro	Field Gang Luna
S. Honda	Field Gang Luna
H. Takahashi	Field Gang Luna
J. Garcia, Sr.	Team Boss
R. Castaneda	Clearing Field Boss
G. Andrade	Harvesting Field Boss
H. Omura	Harvesting Field Boss
V. Castillo	Harvesting Field Boss
T. Sakamoto	Dairy Overseer
G. Santos	Ranch Overseer
K. Taniguchi	Foreman, Feed Mill

Civil Engineering

C. A. Brown	Consulting Engineer
C. M. Bowen	Civil Engineer
J. A. Swezey	Asst. Civil Engineer
D. Kailiponi	Foreman, Office—Draftsman
J. Greig	Surveyor
T. Yamada	Surveyor
H. Yamamoto	Foreman, Supply
T. Hussey	Foreman, Building Dept.
A. Hussey	Car Repair Foreman

Industrial Relations

E. B. Smith	Manager
J. Rodriques	Welfare Director
K. Kekuewa	Village Personnel Officer
J. Laanui	Village Personnel Officer
J. Cabanilla	Village Personnel Officer
P. Sequeria	Safety Director
T. Hida	Chief Clerk
Mrs. V. Harper	Secretary

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

Factory, Pump and Power Stations

G. W. Tompkin	Factory, Pump and Power Station Superintendent
A. J. Collins	Chief Chemist
J. Van Landingham	Research Technician
T. Kurita	Shift Sugar Boiler
S. Asami	Shift Sugar Boiler
Y. Morishima	Shift Sugar Boiler
S. Ota	No. 1 Panman
M. Calimpong	No. 1 Panman
T. Mantilla	No. 1 Panman
F. Galam	Foreman, Centrifugal Station
M. Siatres	Foreman, Centrifugal Station
S. Balisco	Foreman, Centrifugal Station
H. Sakamoto	Chemist's Clerk
T. Uemura	Extra Foreman
M. H. Nelson	Factory, Pump and Power Station Mechanical Engineer
J. W. Fraser	Milling Dept. Engineer
J. Backlund	Steam Plant Engineer
W. Sanborn	Shift Engineer
A. Gabriel	Shift Engineer
S. Watanabe	Construction Foreman
S. Queniones	Construction Foreman
N. Tokunaga	Steel Shop Foreman
M. Mizomi	Machine Shop Foreman
T. Kodama	Foreman, Utility Gang
J. R. McConkey	Electrical Engineer
E. Sato	Foreman, Power Plant

Service Departments

W. O. Harper	Agricultural Mechanical Supt.
F. Miyabara	Acting Garage Foreman
A. S. Pombo	Tractor Dept. Foreman
T. Miyashita	Asst. Tractor Dept. Foreman
P. De Mello	Transportation Dept. Foreman
J. Neddermeyer	Asst. Transportation Dept. Foreman
M. Ito	Section Gang Foreman

Office, Warehouse, Restaurant

S. G. Robertson	Office Manager
W. E. Troy	Asst. Office Manager
A. C. Wong	Jr. Accountant
R. Asato	Asst. Jr. Accountant
M. Kadotani	Credit Manager
W. Soares	Cashier
N. Oda	Head Timekeeper

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 18 (Continued)

E. Yasuhura ..... Foreman, Machine Accounting
M. Sodetani ..... Asst. Foreman, Machine Accounting
J. A. Ah Sing ..... Warehousekeeper
G. Chung ..... Asst. Warehousekeeper
F. Lee ..... Restaurant Overseer
Mrs. E. Willett ..... Secretary

Plantation Stores

C. W. Brooks ..... Manager
G. Okahiro ..... Asst. Manager
S. Omura ..... Asst. Branch Store Manager
Mrs. D. Soares ..... Dry Goods Dept. Head
B. Nacua ..... Grocery and Hardware Dept. Head

Medical

Dr. W. T. Dunn ..... Physician and Surgeon
Dr. R. C. Dusendschon ..... Asst. Physician and Surgeon
Miss M. Resor ..... Head Nurse
Mrs. F. Gay ..... Registered Nurse
Mrs. F. Berry ..... Registered Nurse
Mrs. B. Mitchell ..... Registered Nurse
Miss S. Manmitsu ..... Dispensary and Surgical Asst.
Miss M. Hirashima ..... Dispensary and Surgical Asst.
R. Newtson ..... Medical Technician
Mrs. T. Kunishige ..... Head Cook

Lahaina Light and Power Co., Ltd.

J. R. McConkey ..... Manager
W. Hattie ..... Office Manager
K. Tamura ..... Electrical Foreman
C. Apo ..... Merchandise Dept. Head

Plaintiff's Exhibit No. 18 (Continued)

OCCUPATIONAL INDEX, BY RACES, TERRITORY OF HAWAII, 1940

Major Occupational Group	Percentage of all employed persons	OCCUPATIONAL INDEX						
		Hawaiian	Part Hawaiian	Caucasion	Chinese	Japanese	Filipino	All Other
Professional workers	61.14%	54	142	254	147	64	7	57
Semi-professional workers	0.91	55	154	198	154	77	22	77
Farmers & Farm managers	2.30	113	52	44	57	183	26	70
Proprietors, managers, & officials	7.45	42	64	211	169	93	12	77
Clerical, sales, & similar workers	12.11	32	112	159	239	98	15	45
Craftsmen, foremen, & similar workers	10.35	95	123	128	76	129	23	83
Operatives, etc.	12.35	168	164	102	107	97	66	129
Domestic service workers	5.51	47	65	40	40	189	27	105
Other service workers	6.62	139	150	70	169	101	76	127
Farm laborers & foremen	24.09	54	30	26	15	69	286	107
Farm laborers (unpaid family workers)	1.79	39	39	17	22	224	11	39
Laborers, unskilled, not on farms	10.02	298	1555	71	80	87	100	169
Occupation not reported	0.37	135	162	108	27	108	54	30

"The index is secured by dividing the portion of the gainfully employed in a given racial group who are employed in a specific occupation by the proportion of the employed population of all races engaged in the same occupation. Thus, an index of 100 indicates that the given race has exactly its expected representation in the particular occupation. An index above or below 100 marks a deviation from the norm, either in the direction of concentrating in or of avoiding a particular field." (Andrew W. Lind, An Island Community, p. 251.)

Indexes are calculated by Dr. John E. Reinecke from occupation data given in the 1940 census.

(Testimony of Dr. John E. Reinecke.)

Mrs. Bouslog: The Maui Agricultural Company is the [229] company where the Paia incident occurred.

Judge Biggs: The folder,—the exhibits therein will include the Gilmore, but the book itself is to be withdrawn, and a copy to be substituted either by counsel or by the Court itself, as may be necessary.

Q. (By Mrs. Bouslog): Dr. Reinecke, in respect to the use of names to determine race, are there certain family names that are common in the Territory that connote something to a person who has been here that would not generally be true?

Judge Biggs: I do not understand the question. Rephrase the question, please.

Q. Are there certain family names, of families who were early settlers in the Territory, that connote to a person familiar with the economic set-up a certain race and social class?

A. Do you mean within the Caucasian race?

Q. The Caucasian. Haole is Caucasian?

A. That's true. There are such names.

Q. Can you give examples?

A. Well, looking over the list, the Baldwins, and Waterhouses are representative of two of the most eminent families here.

Q. What effect does the distinction between haole and non-haole have on the attitude—that is, on the sociological feelings and attitude of the people in Maui county? [230]

(Testimony of Dr. John E. Reinecke.)

A. I have associated with the plantation people, both as a teacher and as a sort of an amateur in the field of labor relations, and I find that the laboring people who are almost all from the non-haole group, regard "haole" and "boss," practically as synonymous. If one lives in a plantation village one sees a very distinct difference in the manner of life of the haoles in that community and of the non-haoles; in such a place as Lanai City, for example, the bulk of the population live on the flat at the foot of the mountains, while the supervisors and executives, who are with very few exceptions haoles, live on the slope of the mountain, called "Snob Hill."

Q. Is that the Snob Hill that is accepted terminology in the community of Hawaii?

A. It is among the working people. I don't know what it is among the supervisors.

Judge Biggs: I assume it is not accepted among the supervisors.

I think you can wind this up more than you are doing, Mrs. Bouslog. Aren't we getting rather far afield here?

Mrs. Bouslog: This is background material, having particular reference to 1947.

Judge Biggs: Let's cut the background material as short as you can now. I think we have enough background to give us the general picture. [231]

Q. What connection do the large plantations, both sugar and pineapple, in the county of Maui,

(Testimony of Dr. John E. Reinecke.)

have with the economic structure of the Territory as a whole?

A. They are very closely connected with the economic structure as a whole. Now it happens that in the county of Maui there are branches of three large mainland pineapple companies but all the other major plantations, and three of the large ranches, and a number of subsidiary industries, are part of what is called,—loosely called the Big-5 structure. That is, the ownership and direction of these companies is closely connected with the ownership and direction of the leading firms on all the other islands centered here in Honolulu. It is well-known and accepted fact in the Territory that such centralization of control does exist.

Q. What is the method used,—what is, economically speaking, the method of centralization of control?

A. I think practically every known method. That is, there is interlocking of investments; interlocking of shareholdings; interlocking of directors and officers, and what may be called a general common outlook on the part of the people who control these industries. That is brought out very clearly and distinctly in Professor James H. Shoemaker's monograph: "Labor in the Territory of Hawaii, 1939," Chapter 25.

Judge Biggs: I take it you make the same objection?

Mr. Crockett: Yes, if the Court please. [232]

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Is that document to which you refer Bulletin 687, United States Department of Labor, Bureau of Labor Statistics?

Witness: It is.

Q. (By Judge Biggs): Has there been any substantial change, in your opinion?

A. Your Honor, I have been making some study of the——

Q. Just answer my question. Is there, or is there not, a substantial change?

A. There is no substantial change, your Honor.

Judge Biggs: You offer this document, of which we can take judicial notice anyhow?

Mrs. Bouslog: Yes.

Judge Biggs: All right, let it be offered, and let it be marked, subject to the same ruling as heretofore.

Mrs. Bouslog: I will call the Court's attention particularly to Chapter 3, second section, labor supply, Chapter 25, business structure, and chapter 26, labor organizations, your Honors.

Judge Biggs: Very well. It will be Plaintiffs' Exhibit number 19.

(Document offered in evidence received and marked: "Plaintiffs' Exhibit No. 19.)

Q. Will you continue with your statement of the connection between the big companies on Maui and the factor system [233] centered in Honolulu?

A. Yes. All of the plantations, with the exception of the three branches of the mainland con-

(Testimony of Dr. John E. Reinecke.)

cerns,—that is—beg pardon, I said three; I meant two, the Libby, McNeill & Libby and the California Packing Corporation, and all the others are represented by one or another of the five agencies or factors that are commonly known as the Big-5.

Q. How does the factor system work in relation to the pineapple and sugar companies?

A. The entire structure,—the direction of these pineapple and sugar companies, particularly the sugar companies, is in the hands of the factors to such an extent that in the case of the sugar companies they can in many cases be called practically departments of the factors. The factors act as agents for them in purchasing, selling, financial transactions of all sort, and to a considerable extent even in technical matters.

I might mention further that several of the public utilities and stores on the island of Maui are,—and the leading irrigation system,—are subsidiaries of the plantations.

Q. Are the names of the various Big-5 that dominate,—or the dominant firms on Maui, already in the record, in the transcript?

A. I don't know whether they are or not.

Mrs. Bouslog: I think the record will so show, or I [234] will furnish the Court a list——

Judge Biggs: Either it does or it does not. Are you satisfied it does?

Mrs. Bouslog: My recollection is that it does.

Judge Biggs: You will have to rely on your rec-

(Testimony of Dr. John E. Reinecke.)

ollection, then, unless you want to prove it in some other way.

Q. Have you examined the transcript, Dr. Reinecke, for the purpose of determining if there was brought out during the course of the hearing before Judge Cristy any information which involves or requires a statistical correction in regard to the racial composition of the 1947 Grand Jury?

A. I have examined it, and I find that as regards tables 1 and 2—table 1 is Caucasian, and non-Caucasians in the population, and the Grand Jury panel of Maui County, and table 2 is Caucasians, including part-Hawaiians, and non-Caucasians in the population, and the Grand Jury panel of Maui, and those two tables are substantially correct.

The figures have to be changed by 2 or 4% in the grand jury panel column to allow for errors which were made in our preliminary investigation of the individuals on the panels.

Judge Biggs: Now will that be clear to the Court without a corrected table?

Mrs. Bouslog: We will furnish the Court with a corrected table, table 1 and table 2, so that it shows—[235] or I think it will be made very clear here by the new document that we are going to offer but we can——

Judge Biggs: If it is going to be made clear in some other way, why go ahead.

Mrs. Bouslog: However, I believe that table 1 and that one in particular, it is not quite a true

(Testimony of Dr. John E. Reinecke.)

picture of the authentic composition of the grand jury in relation to the total population of Maui County in that it does not distinguish between the haoles and Portuguese among the Caucasians on the list. It happens that other Caucasians in Maui County—and that, as I said before, includes some individuals who are not classed as haoles; other Caucasians, amounting to approximately 3.7% of the total population, and approximately 4.9% of the males, 21 to 60 years of age; citizens of the United States, and therefore presumably eligible for jury service, while the percentage of haoles on the grand jury panel is as folows——

Judge Biggs: Do you propose to offer a table?

Mrs. Bouslog: We have a table, your Honor, that shows a——

Judge Biggs: Now this table was prepared by the witness?

Mrs. Bouslog: By the witness, your Honor, yes.

Judge Biggs: Has it been examined by Mr. Crockett?

Mrs. Bouslog: I will give Mr. Crockett a copy of it. [236]

Q. Dr. Reinecke, you are referring, first, to the proportion of other Caucasians as it falls in the total population of Maui County, is that correct?

A. Yes.

Q. Is this the table which you prepared showing the proportion of other Caucasians in the total population of Maui County? A. It is.

(Testimony of Dr. John E. Reinecke.)

Q. And this is the document that you now are stating your conclusions from?

A. It is, and this is in addition, Mrs. Bouslog. This is something which I did not give you a copy of, but which I worked up for my own reference. This is the correction, or, rather, an addition to table 1, movant's Exhibit 5, in evidence.

Judge Biggs: Do you submit that, also?

Mrs. Bouslog: Yes.

Q. Did you make any copies, Dr. Reinecke?

A. I don't believe that I did. I worked this up in a great hurry.

Judge Biggs: How nearly have you concluded with this witness on the examination in chief?

Mrs. Bouslog: I have a number of other exhibits that I want to get into the record.

Judge Biggs: You want the same objection?

Mr. Crockett: Yes, as to its materiality, if the Court please.

Judge Biggs: The same ruling. We can mark them as one exhibit.

Mrs. Bouslog: I will withdraw this and make a copy for counsel.

Judge Biggs: All right. Exhibit 20.

(Documents referred to are received and marked: "Plaintiffs' Exhibit No. 20.")

(Testimony of Dr. John E. Reinecke.)

PLAINTIFF'S EXHIBIT No. 20

TABLE I

Male and female

	Caucasian	"O.C."
Male and female	12.5%	±3.6%
Male, 21 yrs. & over, 1940	11.2	3.4
Male, 21-60 yrs., 1947	11.2	3.4
Male, 21-60 yrs., citizens	16.2	4.9
Male, 21-60 yrs., citizens with 4 yrs. or more of school attendance	15.5	4.7
Male, with 8 yrs. or more of school attendance	17.0	5.1
Registered voters, 1946	22.9	6.9
[American and English=		6.78 ||
In grand jury panel		
1947 panel	54.0	42.0
1946	70.0	36-38.0
1945	62.0	34-36.0
1944	64.0	44.0
1943	60.0	38-40.0
1942	58.0	40.0

PROPORTION OR "OTHER CAUCASIANS" IN THE TOTAL POPULATION OF MAUI COUNTY, 1920-1940

Year	Tot Pop., Maui County	Caucasians	Percent of Total	Port & Spanish	Percent of Total	Other Caucasians	Percent of Total
[1]1940	55,980	6,989	12.5%	±4,946	± 8.8%	±2,043±	3.6%
[2]1930	56,146	6,390	11.4%	4,522	8.1%	1,868	3.3%
[3]1920	37,385	6,062	16.2%	4,944	13.2%	1,118	3.0%

Footnotes to Table

16th Census of the United States 1940.

[1]2nd Series. Characteristics of the Population, Hawaii. Table 19. Approximate number and percentage of Portuguese & Spanish and of Other Caucasians determined by assuming that they form the same proportion of total Caucasians in 1940 as in 1930.

[2]15th Census of the United States: 1930—Population Second Series—Hawaii Composition and Characteristics of the Population and Unemployment. Table 19. Percentages calculated.

[3]14th Census of the United States. 1920. Volume III. Population. Composition and Characteristics of the Population by States. Section on Hawaii, Table 19, p. 1190. Percentages calculated.

[4]Puerto Ricans are not included as Caucasians, though many are unmixed whites. "Other Caucasians" include not only Haoles, but also the offspring of marriages among Caucasian groups, as for example

(Testimony of Dr. John E. Reinecke.)

a Russian and a Portuguese, or a Haole and a white Puerto Rican. The social, as distinguished from the census classification of the children depends on the circumstances.

[5]Perentage that "Other Cauasians" formed of all Caucasians:
1940—about 29.2% (assumed
1930—29.2%
1920—18.4%
Admitted.

Mrs. Bouslog: I would like to ask the Court's permission to substitute other copies for these, which will contain the same information.

Judge Biggs: Permission is granted.

Q. Now will you continue with your explanation of your conclusions from these tables which have been submitted.

A. The conclusion, in short, is this: That the 1947 jury panels will contain—while containing 54% of Caucasians, contains 42% of haoles, and the proportion for the five years preceding, given in this table, runs from 34 to 44% haoles. Now it is obvious that while Caucasians, including both haoles and Portuguese, are heavily overrepresented in the grand jury panels, that the over-representation of haoles is vastly greater than that of all Caucasians.

Q. That is, other Caucasians, as shown in the census table? A. Beg pardon. No.

Q. Haole as distinguished from other Caucasians, as shown [238] in the census tables?

A. I don't think I made myself clear. We will say the Caucasian population in 1940 came to 12.5%, but there were 54% of Caucasians on the

(Testimony of Dr. John E. Reinecke.)

panel. That included both haoles and Portuguese. However, there were only somewhere around 3.6 or 3.7 haoles—or, I beg pardon, other Caucasians, which includes haoles and a few others.

Judge Biggs: I am getting all fouled up, completely. Begin again, would you please, as to the 54%.

A. The 54% Caucasians on the grand jury panel, whereas there were only 12.5% Caucasians in the general population. There were 42% of haoles.

Q. 42% of what? A. Of haoles.

Q. (By Judge Biggs): Of what?

A. The grand jury panel, in 1947, while there were about 3.6 or 3.7% of other Caucasians who were in the main haoles in the general population of Maui County.

Judge Biggs: Yes.

A. That is the point that I am trying to make, your Honor.

Judge Biggs: I believe it is clear now.

Q. (By Mrs. Bouslog): Have you, Dr. Reinecke, analyzed the grand jury list for the years 1942 through 1947 to determine the haole and non-haole, in comparison with this 3% of haole population?

A. Well, I have prepared a list of the haoles on each of [239] these grand jury panels. There are a few individuals who are doubtful. I have marked them with a question mark.

(Testimony of Dr. John E. Reinecke.)

Q. Beginning in 1942 will you contrast the number of persons from the occupational and racial information you have who are haoles?

Beginning in 1942 will you state the percentage, as well as the percentage—the number of persons of the Caucasian or haole race, in relation to the three per cent, that exists in the population of Maui County?

Judge Biggs: May be have that stated as to exactly what we are using that term to mean; in what sense?

Mrs. Bouslog: The question, your Honor, to restate it, is:

Q. Will you state—and I asked the witness if he had analyzed the 1947 grand jury list as well as the list from 1942 to 1947, to determine the number of haoles listed.

Judge Biggs: You mean 1942 to 1947?

Mrs. Bouslog: Yes, to determined the number of haoles as this term has been explained and employed here, and the way this list appears in contrast to the 3% that exists in the population.

Judge Biggs: Mrs. Bouslog said Caucasians or haoles. I think it is now clear.

A. I understand the question now. In 1942 there were 20 haoles or 40% of the grand jury panel. In 1943 there were 19 or 20 haoles, or 38 or 40% and in 1944 there were 22, or [240] 44% and in 1945 there were 17 or 18, being 34 to 36% and in 1946 there were 18 or 19, being 36 or 38%, and in 1947 there were 21, being 42%.

(Testimony of Dr. John E. Reinecke.)

Q. In contrast with the 3% haoles in the population?

A. Somewhat over 3%; somewhere between 3 and 4%, by interpolation.

Q. Have you listed the names of the persons who constitute these various members?

A. I have.

Q. Of the various grand juries?

A. I have it here.

(Recess.)

Mrs. Bouslog: Your Honors, during the recess I have shown to Mr. Crockett, and I find I have an extra copy that I can give to Mr. Crockett, a table of the Maui Grand Jury panel for the year 1947, showing the names and the number of the grand jury list, of each jury member, the racial or national extraction, with comments as to the standing of that particular individual in the economic structure of Maui County, and also his occupation.

Q. In making up this table, all the information contained in the transcript about the individual either was testified to by himself or is the jury commissioners'—he has testified to it, and which has been collected and correlated so that this is a summary of the plaintiffs' relating to the 1947 [241] grand jury itself.

Q. Dr. Reinecke, I have here this table to which we have been referring. Did you prepare this table? A. I did.

Q. And in preparing the table did you examine

(Testimony of Dr. John E. Reinecke.)

and refer to the transcript of the testimony, including the defendants' as well as the plaintiffs' case? A. I did.

Q. Did you use also any other available personal information that you have received, personal or otherwise? A. I did.

Judge Biggs: The offer is objected to on the same ground?

Mr. Crockett: With the additional fact that counsel has made a statement that this table shows a reference to all members of the grand jury. There were certain members of the grand jury called by the prosecution in that case, and who gave evidence showing that they were members of the union, and, for example, on page 2 of the list, list number 3, the name Roy Edo appears, and there is no reference whatever to him.

Judge Biggs: We think the list should be complete, or it should not be offered.

Mrs. Bouslog: This contains all the information as to race, and nationality and occupation. There will be [242] other testimony regarding the various things that Mr. Crockett has referred to. This refers only to the race and occupation.

Judge Biggs: How is it headed?

Mrs. Bouslog: Maui Grand Jury panel, 1947. The person's name, the racial or national extraction, and occupation.

Judge Biggs: You correct your offer to that extent? Do you object on any other ground than the relevancy and materiality?

(Testimony of Dr. John E. Reinecke.)

Mr. Crockett: No, your Honor.

Judge Biggs: It will be received as Exhibit Number 21.

(Document offered is received and marked: "Plaintiffs' Exhibit 21.")

PLAINTIFF'S EXHIBIT No. 21

MAUI GRAND JURY PANEL, 1947

Precinct	Name	Racial and/or National Extraction	Occupation
13	Ajifu, Masao Mac	Japanese (196)	Unemployed (mental disability due to wound) (196)
6	Allen, Ray M	Haole (189)	Manager of Wailuku Sugar Co., Ltd. (189)
13	Alu, Mau Hin Edward	Chinese-Hawaiian	Machinist journeyman, HC&SCo. (513)
32	Auld, Kenneth W	Scotch-Hawaiian (420)	Section supt., California Packing Corp. plantation (420) Owner of Budget Shop, Kaunakakai, Molokai.
9	Ayers, Eugene K	English-Hawaiian (193)	Freight clerk, Naval Freight Office (193)
26	Baldwin, Edward H K	Haole (422)	Manager, Ulupalakua Ranch (422)
18	Baldwin, Richard H	Haole (426)	Manager, Haleakala Ranch (425)
3	Bowmer, Edward S	Haole (born in England) (427)	Cashier and asst. bookkeeper, Baldwin Packers, Ltd. (427)
13	Broadbent, Frank W	Haole	2nd asst. manager, HC&SCo.
16	Bruce, Robert P	Haole (born in Scotland) (434)	Manager of E. Maui Irrigation Co. (434) and civil engineer
2	Burns, Alfred S	Haole (166-7)	Supt. of trucking dept., Baldwin Packers, Ltd. (166)
4	Chew, Yong Kam	Chinese (naturalized citizen) (172)	Owner of Let Lung grocery store, Lahaina (172)
16	Coleman, Gottlieb Z	Caucasian - Hawaiian (287, 375) (but considered a Haole by workers at Maui Ag. Co.)	Floor dept. head, trucking dept., Maui Ag. Co. (199)

Plaintiff's Exhibit No. 21 (Continued)

Precinct	Name	Racial and/or National Extraction	Occupation
4	Cornwell, Ralph O.	Caucasian-Hawaiian (291)	In U. S. Army 1940-45 (172), later occupation uncertain but probably truck driver for Air Ways (291)
3	Correia, Manuel, Jr.	Portuguese-Hawaiian	Crane operator, Pioneer Mill Co. (187, 169)
13	Costa, Jack	Portuguese (437)	Chief electrician, HC&SCo. mill (437)
12	de Ponte, Manuel	Portuguese (287)	Asst. personnel director, Kahului R.R. Co. "Running a booze joint now." (295)
1	Eldredge, David P.	Caucasian-Hawaiian	Assistant, personnel dept., Hawaiian Pineapple Co., Lanai (166)
14	Elmore, E. Stanley	Haole (197)	Pres.-manager of Valley Isle Motors, Ltd. (197) Commissioner of Public Instruction for Maui
16	English, Heine W.	Haole (Married to a Hawaiian and erroneously considered part-H'n. by Mr. Pombo, 287)	Supervisor of Maui Ag. Co. garage; manager of Maui Amusement Theatre, Paia (374) (Special investigation)
6	Ezell, Allan H.	Haole (441)	Branch manager, Hawaiian Air Lines, Maui (440)
15	Feiteira, Manuel M.	Portuguese	Head timekeeper, Maui Ag. Co. ( )
13	Fleming, James M.	Haole	Manager of Shell Oil Co. on Maui (370)
27	Fong, Henry S. S.	Chinese (465)	Merchant (owner and manager of store and theater) and contractor (465)
12	Fredholm, Glen H.	Haole	Supt. of trucking dept., Kahului R. R. (367)

Plaintiff's Exhibit No. 21 (Continued)

Precinct	Name	Racial and/or National Extraction	Occupation
30	Freil, Stanley C.	Caucasian-Hawaiian (205)	Foreman, U.S. Engineers Office (205)
			Owner of quarry on Molokai; former wharf foreman for pineapple companies (Special investigation)
27	Goodness, Charles	Chinese-Caucasian-Hawaiian	Present occupation unknown (recently lost an arm) (204); formerly truck operator, Maui County (299)
9	Haygood, Paul A.	Haole (193)	Manager, Maui Soda & Ice Works, Ltd. (Special investigation) (367)
19	Holt, Walter W.	Caucasian-Hawaiian (Caucasian by own statement, p. 442—probably erroneous transcription)	Forester, Terr. Board of Forestry (442); waived exemption
3	Ito, Roy Tatsumi	Japanese	Assistant research worker, Hawaiian Pineapple Co.; formerly a checker (179)
8	Maeda, Irving F.	Japanese (192)	Public accountant (192)
16	Moodie, Andrew	Haole (198)	Manager of Paia Store, owned by Maui Ag. Co. (198)
31	Morris, Charles E.	Haole (205)	Owner and manager of Kukui open air theater, Kaunakakai, Molokai (205)
19	Muroki, Edwin Kiyoshi	Japanese	Storekeeper, Libby, McNeill & Libby (515)
7	Nakamoto, Shosaku	Japanese	Manager, Olympic Market, Wailuku (Special investigation (363)
17	Nunes, Edmund ("Mundo")	Portuguese (287, 200)	Overseer, Board of Water Works, Maui County (200)

Plaintiff's Exhibit No. 21 (Continued)

Precinct	Name	Racial and/or National Extraction	Occupation
1	Onuma, Toshio	Japanese (169)	Research worker, Hawaiian Pineapple Co., Lanai (169)
7	Percy, Winford W.	Haole (191)	Manager, Maui Appliance Co., Wailuku (191). Excused as overage.
12	Peterson, Herbert S.	Haole (485)	Manager, Puunene Store, owned by HC&SCo. (484)
21	Plunkett, John	Irish-Hawaiian (444)	Supervisor, E. Maui Irrigation Co. (444) Overage but waived exemption.
33	Reinhart, Paul	Haole (446)	Asst. plantation manager, Libby, McNeill & Libby (446)
8	Rezents, Ernest	Portuguese (287)	Locomotive fireman, Wailuku Sugar Co. (184)
10	Saka, Charles H.	Japanese	Warehouse clerk, Wailuku Sugar Co. (182)
23	Simpson, Albert S.	Haole (287)	Vice-Pres. & Manager, Hana Ranch Co. and hotel; rep. of Irwin Estate (203)
18	Tam, Anthony A.	Chinese (448)	Farmer (cattle farm) (448-50)
28	Thompson, Charles E.	German-Hawaiian (451)	Retired farmer (ranchman) (408) Overage but waived exemption.
6	Tom, Wai Ken	Chinese (453)	"Supervisor of revenue," Mutual Telephone Co., Maui branch (apparently chief collector) (452)
8	Trask, Joseph H.	Caucasian (own statement, 454; said to be Haole by Mr. Pombo, 286, but may be part-Portuguese)	Manager, Paia branch of Bank of Hawaii (454)

Plaintiff's Exhibit No. 21 (Continued)

Precinct	Name	Racial and/or National Extraction	Occupation
15	Waterhouse, Albert D.	Haole (287)	Irrigation supt., Maui Ag. Co. (198)
7	Sequeira, Louis N.	Portuguese, with probably some Negro blood from Cape Verde Islands (285-286); considered Caucasian by Mr. Chatterton (362)	Manager, accessory & parts dept., Wailuku branch of Von Hamm-Young Co., Ltd. (191)

Note: Numbers in parentheses refer to pages of Transcript, Civil No. 828. Information not referred to transcript was obtained by special investigation, checked in several instances by reference to questionnaires.

Admitted.

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: How many copies do you have of this, please?

Mrs. Bouslog: Well, I had three. I gave Mr. Crockett one, and I can get further copies if needed.

Judge Biggs: Of all these exhibits, of the ones you are now offering?

Mrs. Bouslog: Yes. In the time allowed for the presentation of the case, I did not have any time.

Judge Biggs: You can get them up later?

Mrs. Bouslog: Yes.

Q. Now, Mr. Reinecke, how many members of the 1947 grand [243] jury are managers of important firms in the economic structure of Maui County?

A. Well, going down the list, and taking the people who are either proprietors on their own, or managers, or assistant managers, of large firms, I should list the following people: Mr. Allen, Mr. Edward Baldwin, Mr. Richard Baldwin, Mr. Broadbent, Mr. Burns, Mr. Elsmore, Mr. Izell, Mr. Hagood, Mr. Moodie, Mr. Peterson, Mr. Simpson and Mr. Waterhouse. That is 12.

Q. That is 12 or 24%, in the 1947 grand jury list? A. Yes.

Q. And what percent of the population are manager, or would come in that particular classification or occupation, or classification in the population of Maui County? Give your best estimate of the number of managers, Dr. Reinecke?

A. Well, I say that less than four per cent come

(Testimony of Dr. John E. Reinecke.)

in the class of proprietors, managers and officials, except farm, for the whole county, and so I should estimate less than ½ of 1%.

Q. (By Judge Biggs): What document are you referring to as the basis of your answer?

A. Table 3, your Honor.

Q. (By Judge Biggs): Prepared by you?

A. Yes, movant's Exhibit 7 in evidence.

Q. (By Judge Biggs): That is stipulated in the evidence. Did [244] you prepare that table?

A. No. That was prepared by Mr. Harry Oshima.

Q. Whose qualifications are referred to in the transcript as to the persons in this particular case, in Maui County—this is, managers of big industrial concerns or managers. What percentage did you say, Dr. Reinecke?

A. Oh, for the whole county?

Q. Yes.

A. I should estimate considerably less than one-half of 1% of the total population, of the total actively employed, rather.

Q. Would fall in that classification?

A. Would fall in that classification.

Q. In Maui County?

A. In Maui County.

Q. How many of the members of the 1947 grand jury are daily wage earners?

Mr. Crockett: If the Court please, I would ask that counsel make that question a little more def-

(Testimony of Dr. John E. Reinecke.)

inite. Is she referring to the members of the grand jury or the members of the list? There is quite a difference. In other words, the list consists of 50 names selected by the jury commissioners, and the grand jury panel deals with approximately 23 names, and I think the record should show definitely to which she refers. [245]

Judge Biggs: Suppose you specify that in your question.

Mrs. Bouslog: I am referring to the grand jury list of 50, and I am referring there to the number 50, Mr. Crockett.

Q. How many members of the 1947 grand jury list are daily wage earners?

A. That is a little more difficult to determine than the other, but I should say that Mr. Alui, Mr. Cornwall, Mr. Correa, Mr. Resente are pretty clearly daily wage earners. Also that Mr. Iziku, who is unemployed, was in all probability a wage earner before he went into the Army, and would come in the general class, and there is some question as to Mr. Ayers, and he was, I believe, a wage earning employee at the time the grand jury panel was drawn, and he is now classified as a slate clerk, and I usppose is on a salary, but in all that would be about six men, taking the commissioner's estimate.

Q. Are daily wage earners. Are any of those common laborers?

A. None of them, so far as I know—so far as I can tell, unless truck driving, I believe, is actually common labor. That is the nearest to it of any.

(Testimony of Dr. John E. Reinecke.)

Q. Now in terms of the United States Census classification of managerial, of managerial, archipanelial and clerical groups—do the remaining people on the panel fall in that [246] category?

A. They do, with two exceptions. Mr. Tam, Anthony Tamm, and Charles Thompson.

Q. Mr. Thompson; why does Mr. Thompson not fall in that class?

A. He is a retired farmer, and apparently a dirt farmer, a man who does his own work, or the major part of it; the same being true of Mr. Tamm.

Judge Biggs: Is that the definition of dirt farmer, a man who does his own work?

A. I don't know if that is the census classification, your Honor. It is the generally accepted definition of it, I believe.

Judge Biggs: Very well.

Q. In other words, he is on a plantation; if he doesn't do his own work, he is on the plantation——

Judge Biggs: Let me inquire.

Q. (By Judge Biggs): Does that mean that he owned his own farm or not, in your opinion?

A. It does mean that he owns or rents his own farm.

Q. Not owns or rents. Does he own his own farm, or doesn't that appear?

A. That does not appear, but the circumstances are such—the chances are that he does not.

Judge Biggs: Well, "chances" is not enough.

A. I might call the attention of the Court that

(Testimony of Dr. John E. Reinecke.)

there is not [247] much of the Territorial lands, the Hawaii lands, in individuals, large tracts of land, there is very little, apart from the plantations, very little directly owned land—and I believe 90% of the privately owned land is owned by a——

Judge Biggs: We are getting pretty far afield.

Q. After the hearings before Judge Cristy, Dr. Reinecke, the defendant called as witnesses three union members whom you have classed as clerical employees, and have not classed as daily wage earners. Will you tell the Court how and why you have classified Skai as a clerical employee, rather than a daily wage earner?

Mr. Crockett: If the Court please, might I suggest at this time that my objection to this document is that it contains nothing—it did not contain the reference to the jury. This testimony was insufficient. The testimony appears on page 182 of the transcript.

Q. Have you classified Charles Sakai as a clerical employee rather than a daily wage earner?

A. To the best of my knowledge, Mr. Sakai being a warehouse clerk, it is predominantly clerical work, and he receives a monthly salary.

Q. And how about Mr. Moroka?

A. Mr. Edward K. Moroke is I presume, being a storekeeper, for Libby, McNeill & Libby—I presume it is practically the same sort of work as Mr. Sakai. [248]

(Testimony of Dr. John E. Reinecke.)

Q. Do you know of your own knowledge what Mr. Moroke's educational qualifications are?

A. From the material which we gathered, I forget whether it appears in his grand jury questionaire or not—I believe that Mr. Moroke has a high school education—12th grade education; that is purely from memory. I don't have the individual cards with me, unfortunately.

Mrs. Bouslog: Your Honor, one of the exhibits in the case will be—I guess it has not been offered. I will show it to the witness.

Q. Is that the same Edward T. Moroke that you are talking about? (Indicating.)

A. Edward T. Moroke, yes.

Q. What is this document?

A. The returned jury questionaire for Mr. Moroke.

Mrs. Bouslog: It will be in the record, your Honor.

A. I see that my memory is in error. He says in the questionaire that he has had 2½ years University of Hawaii education.

Q. And he is classified, in the classification which you have made, as a clerical employee, as opposed to a daily wage earner?

A. That's right.

Q. Now as to Mr. Ito.

A. Mr. Ito, it appears, is an associate research worker for [249] the Hawaiian Pineapple Company, and I believe that that would be the same

(Testimony of Dr. John E. Reinecke.)

profession—or it is a semi-profession or occupation, and I presume that he draws a monthly salary.

Q. And how about Mr. Onuma?

A. The same.

Q. Is there any agricultural worker or any laborer on the panel? A. There is none.

Q. That is, on the grand jury list?

A. There is none.

Q. Was the grand jury list the list of 50?

A. The list of 50.

Q. What percentage of employed persons in Maui County are agricultural laborers?

A. Approximately 49%.

Q. Have you any evidence that substantiates your testimony that there is a recognized——

A. I beg your pardon. That is, I made a mistake there; that is, farm laborers, and farm foremen come to 48.82% and after deductions for male non-laborers it comes to 46.41%; 46% is the farm laborers in the employed persons in Maui County.

Q. 46% is the farm laborers in the employed persons in that county? A. That's right.

Q. Have you any evidence to support your conclusion that [250] there is a recognized social-economic distinction between clerical and common laborers, or daily wage earners?

A. Yes, I have. I think that not only is it a matter of common knowledge in the Maui community, but it would appears from published studies, as

(Testimony of Dr. John E. Reinecke.)

well, and I should like leave to read pertinent paragraphs on the significance of the social-economic group.

Judge Biggs: Well, we can all read. Why not simply submit it, and refer to the document, or include copies in the record?

Mrs. Bouslog: All right, your Honor. May we have the document, Dr. Reinecke?

Witness: The marked paragraph, marked in pencil on the margin.

Mrs. Bouslog: This, your Honor, is from the 16th Census of the United States, 1940, United States Department of Commerce; population; comparative occupational statistics for the United States, 1870 to 1940, and the particular part referred to is social-economic group, and the heading of it, to which we refer, is "The significance of the social-economic group."

Judge Biggs: Very well, we will take judicial notice of that, and it is not necessary to introduce the document, even; we can get that from the library very easily.

Q. Now, Dr. Reinecke, can you tell us the number of Filipinos [251] in Maui County, from, say, the year 1920, on?

A. I have tried to get an estimate of the present Filipino population, but I am unable to do so. I have the figures for the three censuses, 1920, 1930 and 1940. In 1930 the Filipinos numbered 3,004, or only 8% of the total population; in 1930, there were 14,144, or 25.2%; in 1940 the number had

(Testimony of Dr. John E. Reinecke.)

dropped to 10,509, or 18.8%. I presume that it has not departed very much from that figure since.

Judge Biggs: You say you presume that it has not departed much from that figure.

A. I don't believe it has departed very much from that figure.

Judge Biggs: I suppose you mean the figure has not changed materially.

A. It has not changed materially, your Honor.

Mr. Crockett: May I ask please for the percentage for 1940? A. It was 18.8%.

Q. Have there been any large scale groups of importations of Filipinos since 1940?

A. Some six thousand adult males, I think, and around 2500 females, and children, were imported here.

Q. So that if anything the figure would have been increased rather than decreased since 1940?

A. Perhaps silghtly. I think that it would not have increased [252] more than 1%, however. I think that we can take something between 18 and 20% as being the present proportion of Filipinos, or the percentage of Filipinos.

Q. Is the Filipino the largest ethnic group in the Territory?

A. No, it is not the largest group. It amounts to approximately one-third of the total employees, and families, as of June 30, 1947.

Q. Is that for Maui county or for the Territory?

A. That is for the Territory.

(Testimony of Dr. John E. Reinecke.)

Q. Now with respect to Maui county?

A. Take Maui County—taking the men alone, in Maui county, there are 59,032 men of all races, and the Filipinos amount to two thousand seventy-two—or about 35%. I presume that most of the men on the plantations are plantation employees.

Judge Metzger: May I ask, does not the Territorial Board of Health make an annual census which would approximate that?

Mrs. Bouslog: They use recognized method, the population tendencies and characteristics, which were also used by the expert witnesses which prepared the tables in this case.

In other words, all available sources of information, the annual report of the Board of Health, and statistics—any statistics which the Department of Labor used, were drawn upon in order to complete the tables that were used in this [253] case.

Q. Now, with respect to sugar and pineapple plantations, what percentage of the laborers on those plantations is of Filipino ethnic classification?

A. The figures which I just gave are from the Hawaiian Sugar Planters' Association, census of Hawaiian Sugar plantations, June 30, 1947, but that does not include the pineapple plantations. I have no way of knowing whether the proportion is greater or smaller on the pineapple plantations.

Q. What is the document that you referred to?

Judge Biggs: Would you hold it up, Doctor, so we may see it.

(Testimony of Dr. John E. Reinecke.)

Do you propose to offer this document?

Mrs. Bouslog: If the Court desires it.

Judge Biggs: I think we should have the supporting documents to which the witness refers. Has Mr. Crockett seen it?

(Document shown to Court and opposing counsel.)

Judge Biggs: Now, Miss Lewis, will you be ready with your motion pictures after lunch, after the noon recess?

Miss Lewis: We thought it might be better if Mrs. Bouslog has not concluded—and we have other witnesses—if we showed that Monday morning.

Judge Biggs: All right. Very well. The Court will stand in recess until 2 o'clock p.m.

Adjourned to 2 p.m., April 23, 1948. [254]

April 24, 1948

2:00 o'Clock p.m. Session

JOHN E. REINECKE

having been previously sworn, was recalled, and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Dr. Reinecke, what is the second largest ethnic national group in Maui County?

A. It is the Filipino.

Q. Representing what percentage of the population?

(Testimony of Dr. John E. Reinecke.)

A. 18.8 percent, according to the latest census.

Q. What percentage of the population, or what percentage of plantation laborers in Maui County are Filipinos?

A. Do you mean the people classed as foreign laborers in the census?

Q. I mean of the field hands.

A. Of the field hands?

Q. Yes. A. Easily fifty percent.

Q. For the Territory as a whole, how many are there?

A. Oh, I should say 59 percent, approximately, at the time of the 1940 census.

Q. So that fifty percent in Maui County would be a conservative estimate? [255]

A. It would be.

Q. When were the first Filipinos imported into the Territory of Hawaii as laborers?

A. In 1907, as I recall.

Q. And since 1907 under what circumstances have persons of the Filipino race become citizens of the United States?

Miss Lewis: If your Honors please——

Judge Biggs: Isn't that too far afield?

Mrs. Bouslog: I don't think so, your Honor, since it goes to the eligibility.

Judge Biggs: Is this witness competent to testify to that? He is not a lawyer.

Mrs. Bouslog: Well, I suppose——

Judge Biggs: We can take judicial notice of

(Testimony of Dr. John E. Reinecke.)

the conditions or the status, at least, under which Filipinos may become citizens of the United States, but to ask this witness to testify concerning those seems to be too remote from this field.

Mrs. Bouslog: Very well, your Honor.

Judge Biggs: Objection sustained. He can draw conclusions from their failure to become citizens, if he desires. Do you desire to bring out, for example, that Filipinos can become citizens of the United States by being inducted or volunteering for the armed forces.

Mrs. Bouslog: Yes, if your Honor please, under the Organic Act, but that I can do myself. That's right. I [256] mean I think it is a matter of which the court can take judicial notice.

Q. When were Filipino voters first reported separately in the census report?

A. Not in the census report, in the reports filed with the Secretary of the Territory. 1932 is the first year in which they were separately reported.

Mrs. Bouslog: Mr. Crockett, I will show you a document which says—it is from the office of the County Clerk of Maui County—showing the number of Filipino registered voters for the election years 1934 to 1946, certified with the seal of Eugene Bal, County Clerk. I will give you a copy of it.

Mr. Crockett: No objection to this.

Judge Biggs: Except as to relevancy?

Mr. Crockett: Yes.

Judge Biggs: Same ruling.

(Testimony of Dr. John E. Reinecke.)

Mrs. Bouslog: I will offer this.

Judge Biggs: Let it be offered. It will be Number 22, Plaintiffs' Exhibit 22.

PLAINTIFFS' EXHIBIT No. 22

(Printed Seal)

OFFICE OF COUNTY CLERK
County of Maui
Wailuku, Maui, T. H.
April 22, 1948

Number of Filipino Voters Registered for the Election Years Covering 1934-1946

Year	Male	Female	Total
1934	9	4	13
1936	29	7	36
1938	67	17	84
1940	84	25	109
1942	72	27	99
1944	63	37	100
1946	103	84	187

This is to certify that the above is a true and correct transcript of the records on file in the Office of County Clerk, County of Maui, Territory of Hawaii.

EUGENE BAL,
County Clerk, County of Maui,
Teritory of Hawaii.

[Seal]

Admitted.

Q. Mr. Reinecke, have you examined the records in the Secretary of the Territory's office so that you can tell us the number of registered male voters during those years in Lanai precinct, the first precinct of Maui County?

Judge Biggs: Did you waive the production of the original records? [257]

(Testimony of Dr. John E. Reinecke.)

Mr. Crockett: Yes, we have.

A. I have examined them, and the figures are as follows: 1932——

Judge Biggs: Are you going to put these in evidence?

Mr. Crockett: I have no table covering it.

A. It covers only about seven figures, your Honor.

Judge Biggs: Very well.

A. 1932, 1. 1934, 1. 1936, 6. 1938, 12. 1940, 25. 1942, 23. 1944—I have not the figures. 1946, 18.

Mrs. Bouslog: Now, with the courts' and Mr. Crockett's permission, to save the time of the court, I would like to ask the courts' permission to offer or submit to the court, at a later date, reserving the number—a list of names of persons whom we classify and know are Filipinos from the registry of voters for various precincts in Maui County, to show that there are qualified Filipinos—that is, persons of Filipino nationality who are qualified for voting, and the qualifications, of course, are the same for jury service.

Judge Biggs: When you say "we" you mean yourself and your associates, the plaintiffs?

Mrs. Bouslog: I mean the plaintiffs, your Honor.

Judge Biggs: Well, of course, what you know is not evidence.

Mrs. Bouslog: Well, I was asking Mr. Crockett to—the list would contain names. If Mr. Crockett had any objection, that the name was a Filipino name or a Filipino person——[258]

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Does the list show that the persons are in fact Filipinos?

Mrs. Bouslog: The list, your Honor, shows merely the precinct in Maui County, the names of the persons, and the address of the person, but because mostly in every precinct in Maui County the International Longshoremen's & Warehousemen's Union has members, we have our membership list. We have a list showing the nationality of various people——

Judge Biggs: Unless you could procure a stipulation from Mr. Crockett——

Mrs. Bouslog: I understand without his stipulation it would not be admissible.

Judge Biggs: What is Mr. Crockett's pleasure in the matter, reserving, of course, the objection as to relevancy?

Mr. Crockett: It is all so indefinite. I would rather leave it until we get something definite. If we get the list and check it over, we can see what it says. It is this kind of indefiniteness in this proposal which leads us at this time to hesitate to enter into the stipulation.

Mrs. Bouslog: I will explain exactly what I would like to have, if possible, for the defendants to stipulate to. Perhaps he will stipulate that there are persons in each one of the precincts, or Filipino nationality who are eligible to vote, in Maui County.

Mr. Crockett: If the courts please, I understood [259] that the list which counsel showed me a

(Testimony of Dr. John E. Reinecke.)

few minutes ago showed me the numbers of such persons. I thought that would be sufficient.

Judge Biggs: You have 22 people, 22 Filipino voters registered for the elections, '34, '35, '36. This shows the number of male and female voters, and the total. Why do you go beyond that?

Mrs. Bouslog: I want to be sure, your Honor, that I have shown that there are individual Filipino persons who are in addition to the numbers—I mean that these numbers represent individuals, that they are qualified Filipinos for jury service in Maui County. I want to meet the burden of proof.

Judge Biggs: I see that you are trying, under your theory of the case, to make the proof, but I don't see how you are going to reach that by this avenue, unless there is an agreement by Mr. Crockett that in addition to the names shown on this list, or the numbers of persons shown on this list there are others who are not registered voters who are so qualified. Isn't that the case?

Mrs. Bouslog: Well, I think I can argue that there are others who are not registered voters who are so qualified.

Judge Biggs: You may be able to argue it, but before you can argue it, you have got to have something in the record.

Mrs. Bouslog: In respect to what I am showing now, [260] I wanted to take the names from the precinct records, which are on file with the County Clerk, to show individuals, specified individuals who

(Testimony of Dr. John E. Reinecke.)

are registered voters, and therefore, at least, they met the minimum requirements of the jury statute.

Judge Biggs: Aren't those registered voters?

Mrs. Bouslog: Yes, but there are no names attached to this list, and I wanted to be sure——

Judge Biggs: I am not sure what your point is that you bring to the situation. A man is or is not qualified to vote, because his name—I am afraid I am not getting it. Begin it again, Mrs. Bouslog.

Mrs. Bouslog: We have checked the registry of voters which we procured from the County Clerk of Maui County. We have gone down through a number of precincts and checked the names of persons who are of Filipino nationality who are registered to vote from the 1944 list, which the Grand Jury used, to see if there were individuals of Filipino nationality to whom questionnaires should have gone at the time, despite the fact that there were none selected for the Grand Jury. But if the court believes that the mere showing of—that there are registered voters of Filipino nationality according to the records in the clerk's office, at least that shows that that many people can vote in Maui County.

Judge Biggs: The court would not commit itself at this point as to whether your evidence is sufficient, or even whether it be pertinent, but I do think, if you intend [261] to prove that, you had better make proof of it, as well as you can, unless you can procure a stipulation. Mr. Crockett is

(Testimony of Dr. John E. Reinecke.)

apparently unwilling to stipulate at this point. Perhaps it can be discussed with him further, if you desire an opportunity, and this is your last witness.

Mrs. Bouslog: With two exceptions, your Honor, maybe.

Judge Biggs: Very well. Should you reopen your case, or will you conclude your case with evidence on this point at some time, Monday or, if necessary Tuesday?

Mrs. Bouslog: Your Honor, I will make up the list and submit it to Mr. Crockett, and he can make any objection, and then I will offer it into court, after that is done.

The Court: If he objects and will not stipulate, you will have to be in a position to prove it.

Mrs. Bouslog: Yes, your Honor.

Mr. Crockett, you will recall that one of the exhibits in the court before were a number of questionnaires of Filipino nationals—returned questionnaires—which was one of the exhibits in the case before Judge Cristy.

Q. I have in my hand an exhibit which was submitted before Judge Cristy, which is—several questionnaires, returned questionnaires of persons who indicate on their questionnaire that their nationality is Filipino, they are returned jury questionnaires, returned to the jury commissioners. Dr. Reinecke, have you examined these questionnaires and the transcript, and compared these questionnaires with the questionnaires [262] of Caucasians which were classified by the jury commissioners?

(Testimony of Dr. John E. Reinecke.)

A. I have examined these, and also the transcript regarding it. I have gone through the material on the Caucasians who are on the grand jury panels for 1942 to 1947.

Q. I hand you the questionnaire of Vincente Figueira who says that his father was a Filipino and his mother was a Filipino. It shows that he reached the 9th grade in school. Will you look on the records of the court? This questionnaire was marked "questionable." Look at that and see if Caucasians whose questionnaires showed the same amount of information were marked "qualified"?

Mr. Crockett: To which we object. I don't think that this witness is qualified to pass upon questions like that. That is a matter within the discretion of the jury commission.

Judge Biggs: I think the question is objectionable for another reason, Mrs. Bouslog, namely, that you are offering, or you are telling him to compare something with something.

Mrs. Bouslog: He has already done it. It is before the court in the form of a stipulation of record, your Honor.

Judge Biggs: Compared these questionnaires?

Mrs. Bouslog: With the other questionnaires. We have questionnaires for the 1947 grand jury.

Judge Biggs: You are asking him to compare these questionnaires with certain questionnaires which are in a [263] sense in futuro?

Mrs. Bouslog: Yes, they are.

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Let him compare first, and then rephrase your question, then we will hear the objection.

Q. Have you compared the questionnaires of persons of Filipino nationality with the questionnaires of persons who were actually selected for the grand jury service in 1947?

Judge Biggs: Which are now in your hands. Is that correct, Doctor?

A. I have compared them with these questionnaires, and I have also compared them with material which we drew from previous questionnaires.

Judge Biggs: I think the latter part of the answer must be stricken out. I don't see how we can have a basis of comparison on questionnaires of this character.

Mrs. Bouslog: I think, your Honor, that the record shows—that the stipulated record shows all these questionnaires were present in court at the time when the comparisons were made by him, during the whole hearing before Judge Cristy, and some of the information about these questionnaires is already in the record. I am merely picking up that information which is not in the record.

Judge Biggs: As I understand the witness testifies that he examined the questionnaires which were in the proceeding before Judge Cristy. He also examined various other [264] questionnaires, isn't that correct? A. That's correct, your Honor.

Judge Biggs: Now, I think you will have to limit your question to the comparison and examina-

(Testimony of Dr. John E. Reinecke.)

tion of those questionnaires which were before Judge Cristy.

Mrs. Bouslog: All of them were before Judge Cristy.

Judge Biggs: The witness says not, Mrs. Bouslog. Let me put it this way: Did you examine the questionnaires, or is your answer that you are about to make based on questionnaires which were not before Judge Cristy?

A. The answer is based on questionnaires which I examined. I don't know whether they were brought before Judge Cristy or not.

Mrs. Bouslog: Your Honor, I think the record will show that Judge Wirtz jury commissioner in his testimony offered and used throughout the hearing, and it was understood that these questionnaires being a part of the court records could not be offered in evidence in that case, but they were considered and offered before Judge Wirtz to show the method of selection of the jury panel. And these questionnaires were from all the precincts that had been examined.

Judge Biggs: Speaking for myself—I have not consulted with my brothers, I have no objection on this ground to your making use, or having this witness examine the questionnaires which were testified to before Judge [265] Cristy or Judge Wirtz, but I am not prepared to say that you may have his testimony respecting other questionnaires which were not in the other proceeding. It seems to me that it is too remote.

(Testimony of Dr. John E. Reinecke.)

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: For other reasons as well, I might as well state that, that you are offering a basis of comparison on something which is not before this court, and which was not before the court which went into the question of the jury panel.

Mrs. Bouslog: All right, at this time I will offer in evidence an exhibit which was before—which was offered by the plaintiffs before Judge Cristy. The exhibit number before Judge Cristy is 16. Questionnaires on the grand jury, which was received in evidence. I can have it given the next number.

Judge Biggs: That is in by stipulation?

Mrs. Bouslog: Not so far as the exhibits are concerned.

Miss Lewis: It was stipulated upon production that it might be admitted, subject to our objection which I have already made.

Judge Biggs: On objection as to its relevancy?

Miss Lewis: In general. It has been set forth in detail. The point is that we require it should be identified now.

Judge Biggs: Very well, you waive form. It is merely the question of relevancy. [266]

Mrs. Bouslog: So at this time, your Honor——

Judge Biggs: Let that be admitted and marked in some fashion.

Mrs. Bouslog: It should be marked questionnaires on instant grand jury.

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Number 23 I think it is.

Mrs. Bouslog: Number 23.

Judge Biggs: Let the clerk mark it. The papers which the doctor has are copies of this?

Mrs. Bouslog: These are photostatic copies of the actual grand jury questionnaires.

Judge Biggs: Very well.

Mrs. Bouslog: Movant's Exhibit 16.

Judge Biggs: Exhibit 23 here.

PLAINTIFF'S EXHIBIT No. 23

Note: Failure to return this Questionnaire on or before Oct. 10, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, on or before Oct. 10, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Charles Edward Thompson.

2. Address (a) Home: Kihei, Maui. Phone No. 7943.

(b) Business Rancher. Phone No. 7943.

3. When and Where born? Kona, Hawaii.

4. If Naturalized, when and where? No.

5. How long in Territory? 67 years. County of Maui? 50 years.

6. Married or single? Married. Number of children, if any? 16.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

7. Nationality of Father? German. Of Mother? English Hawaiian.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) both. Served a number of times.

9. What is your present occupation? Rancher.

10. If employed, by whom and Name your superiors. Self.

11. What has been your occupation during the past five years? Ranching.

12. What schools have you attended? Public schools.

13. What grade in school did you reach? 8th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date Oct. 14th. Signature Charles Edward Thompson.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 5, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Note: Fill out each question in own hand writing, and on or before Oct. 5, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Edmund Nunes.

2. Address (a) Home: Makawao, Maui. Phone No. 3 White 606.

(b) Business Makawao, Maui. Phone No. 2 White 721.

3. When and Where born? June 25, 1897. Paia, Maui, Terr. Hawaii, [illegible].

4. If Naturalized, when and where? .....

5. How long in Territory? 49 years. County of Maui? 49 years.

6. Married or single? Married. Number of children, if any? 2.

Nationality of Father? Portuguese. Of Mother? Portuguese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? District overseer for the County of Maui, Makawao District.

10. If employed, by whom and Name your superiors County of Maui.

11. What has been your occupation during the past five years? Superintendent.

12. What schools have you attended? Paia School and St. Anthony's Wailuku.

13. What grade in school did you reach? 8th.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

14. Is there any physical reason why you should not sit as a juror? If so, what reason?.....

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: Sept. 30, 1946. Signature Edmund Nunes.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 12, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 12, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Kenneth W. Auld.

2. Address (a) Home: Hoolehua, Molokai. Phone No. 7W35.

(b) Business Calif. Packing Corp. Phone No...

3. When and Where born? Dec. 6, 1901. Honolulu.

4. If Naturalized, when and where?.....

5. How long in Territory? 48 yrs. County of Maui? 21 yrs.

6. Married or single? Married. Number of children, if any? 3.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

7. Nationality of Father? Part-Hawn. Of Mother? Part-Hawn.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) both. One year (Grand Jury).

9. What is your present occupation? Section Supt.

10. If employed, by whom and Name your superiors Wilson N. Jacobson, Calif. Packing Corp.

11. What has been your occupation during the past five years? Section Supt.

12. What schools have you attended? Kamehameha, Punahon, University of Hawaii.

13. What grade in school did you reach? Four years high school and thru U. of H.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: Oct. 10, 1946. Signature Kenneth W. Auld.

(See Statutes—reverse side)

[Notation in pencil] OK Grand.

Note: Failure to return this Questionnaire on or before Sept. 6th, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To Prospective Jurors, Circuit Court, Second Circuit.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Note: Fill out each question in own hand writing, and on or before September 6th, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Eugene Kealoha Ayers.

2. Address (a) Home: P.O. Box 564, Wailuku, Maui, T. H. Phone No. 7891.

(b) House No. 1332 Main St., Papohaku. Phone No. .....

3. When and Where born? Born Jan. 20, 1917, Papohaku, Maui, T. H.

4. If Naturalized, when and where?.....

5. How long in Territory? Twenty Nine Years. County of Maui? Twenty-nine years.

6. Married or single? Single. Number of children, if any? None.

7. Nationality of Father? English-Hawaiian. Of Mother? English-Hawaiian.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) I sat on two civil case as Trial Jury-man, year 1946.

9. What is your present occupation? Naval Air Station, Kahului Freight Clerk at Navy Freight Office, Kalului.

10. If employed, by whom and Name your superiors I am employed by Naval Air Station, Kahului. My superiors are Thomas Peco, foreman and Comdr. Formans, Naval Supply Officer.

11. What has been your occupation during the past five years? From 1941 I've been a Roller Oper.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

for Hawaiian, consc., U. S. Engineers & P.N.A.B. and Navy Freight Clerk.

12. What schools have you attended? St. Anthony Boys' School, Wailuku, Maui, T. H.

13. What grade in school did you reach? Graduated from the tenth grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No, I don't think there is any physical reason why I should not sit as a juror.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: August 9, 1946. Signature Eugene K. Ayers.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 10, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 10, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Edward Henry Kittredge Baldwin.

2. Address (a) Home: Ulupalakua. Phone No. 322.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

(b) Business Ulupalakua. Phone No. 321.

3. When and Where born? Specklesville, May 3, 1903.

4. If Naturalized, when and where?.....

5. How long in Territory? 43 years. County of Maui? 43 years.

6. Married or single? Married. Number of children, if any? two.

7. Nationality of Father? American. Of Mother? American.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case). One term Grand Jury.

9. What is your present occupation? Ranch manager.

10. If employed, by whom and Name your superiors Ulupalakua Ranch, Ltd.

11. What has been your occupation during the past five years? Ranch manager.

12. What schools have you attended? Maui High, Thacker School, A to Zed School, University of Virginia.

13. What grade in school did you reach?.....

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service?

Why.....

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Date: October 5, 1946. Signature E. H. K. Baldwin.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 5, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 5, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Richard H. Baldwin.

2. Address (a) Home: Makawao. Phone No. 204.

(b) Business Makawao. Phone No. 3W704.

3. When and Where born? Aug. 21, 1911, Honolulu.

4. If Naturalized, when and where?.....

5. How long in Territory? 35 years. County of Maui? 30 years.

6. Married or single? Married. Number of children, if any? 3.

7. Nationality of Father? American. Of Mother? American.

8. What experience have you had as a Juror (Indicate whether Criminal or Civil case) Grand Jury.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

9. What is your present occupation? Assistant manager of ranch.

10. If employed, by whom and Name your superiors Haliakala Ranch Co., S. A. Baldwin.

11. What has been your occupation during the past five years? Same.

12. What schools have you attended? Punahou; Cornell University.

13. What grade in school did you reach? Junior year, college.

14. Is there any physical reason why you should not sit as a juror? If so, what reason?.....

15. Do you claim disqualification or exemption from jury service? No.

Why (Am busy but will serve if necessary.)

Date: Sept. 30, 1946. Signature R. H. Baldwin.

(See Statutes—reverse side)

To: Prospective Jurors, Circuit Court, Second Judicial Circuit.

Note: Fill out each question in own hand writing, and on or before Dec. 6, 1945, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Edwin S. Bowmer.

2. Address (a) Home: Lahaina, Maui, T. H. Phone No. 2923.

(b) Business: Lahaina, Maui, T. H. Phone No. 2935.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

3. When and Where born? May 14, 1905, Newcastle-on-Tyne, England.

4. If Naturalized, when and where? Thru father who obtained his June, 1922, Honolulu.

5. How long in Territory? 26 years. County of Maui? 10 years.

6. Married or single? Married. Number of children, if any? 1.

7. Nationality of Father? English. Of Mother? English.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Cashier & Asst. Bookkeeper.

10. If employed, by whom and Name your superiors Baldwin Packers, Ltd. D. T. Fleming, Manager, Chas. W. Ashdown, Office Manager.

11. What has been your occupation during the past five years? Secretary to manager of Honolulu Plantation Co. and Cashier and Asst. Bookkeeper, Baldwin Packers, Ltd.

12. What schools have you attended? McKinley High School. Left after 1 year.

13. What grade in school did you reach? Freshman in High School.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why?.....

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Date: November 7, 1945. Signature Edwin S. Bowmer.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 4, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Alfred Sawyer Burns.

2. Address (a) Home: Honokahau, Lahaina. Phone No. 3135.

(b) Business Honokahau, Lahaina. Phone No. 3135.

3. When and Where born? 21st Feb., 1898, Fort Fairfield, Maine.

4. If Naturalized, when and where?.....

5. How long in Territory? 21 yrs. County of Maui? 21 yrs.

6. Married or single? Married. Number of children, if any? 2.

7. Nationality of Father? English. Of Mother? English.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Grand Jury 2 or 3 times, years ago, Maui.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

9. What is your present occupation? Transportation Super.

10. If employed, by whom and Name your superiors Baldwin Packers Ltd. D. T. Fleming. G. D. Russell.

11. What has been your occupation during the past five years? Transp. Super.

12. What schools have you attended? Fort Fairfield High School, University of Maine.

13. What grade in school did you reach?.....

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: 28th Sept., 1946. Signature A. S. Burns.

(See Statutes—reverse side)

To: Prospective Jurors, Circuit Court, Second Judicial Circuit.

Note: Fill out each question in own hand writing, and on or before Dec. 6, 1945, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name William Preston Burns.

2. Address (a) Home: P.O. Box 176, Paia, Maui. Phone No. 2W598.

(b) Business:..... Phone No.....

3. When and Where born? June 30, 1903, Fort Fairfield, Maine.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

4. If Naturalized, when and where?.....

5. How long in Territory? 22 years. County of Maui? 22 years.

6. Married or single? M. Number of children, if any? 2.

7. Nationality of Father? American. Of Mother? American.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Civil—Trial Juror.

9. What is your present occupation? Harvesting field superintendent.

10. If employed, by whom and Name your superiors Maui Agri. Co., G. W. Steele.

11. What has been your occupation during the past five years? General Plantation Work and Harvesting.

12. What schools have you attended? High School, Arvostock Central Institute.

13. What grade in school did you reach? Graduate.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why?.....

Date: Nov. 9/45. Signature W. P. Burns.

(See Statutes—reverse side)

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

[Notation in pencil] OK. Grand.

Note: Failure to return this Questionnaire on or before Sept. 6th, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before September 6th, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Ralph O. Cornwell.

2. Address (a) Home: Kihei, Maui. Phone No. 7942.

(b) Business None at present. Phone No.....

3. When and Where born? Oct. 7th, 1910 at Waikapu.

4. If Naturalized, when and where?.....

5. How long in Territory?.....County of Maui? All my life.

6. Married or single? Single. Number of children, if any? None.

7. Nationality of Father? American. Of Mother? American.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? None.

10. If employed, by whom and Name your superiors None.

11. What has been your occupation during the past five years? U. S. Army.

Plaintiff's Exhibit No. 23—(Continued)

(Testimony of Dr. John E. Reinecke.)

12. What schools have you attended? Kamehameha & Lahainaluna schools.

13. What grade in school did you reach? Finished Junior year.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why? I think I'm qualified.

Date: Aug. 22/46. Signature Ralph O. Cornwell.

(See Statutes—reverse side)

[Notation in pencil] OK. Grand.

Note: Failure to return this Questionnaire on or before Sept. 6th, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court Second Circuit.

Note: Fill out each question in own hand writing, and on or before September 6th, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Mr. Manuel Correia, Jr.

2. Address (a) Home: 347 Puukolii Lahaina, Maui. Phone No. .....

(b) Business..... Phone No.....

3. When and Where born? Born at Wailuku, Maui, Sept. 1, 1896.

4. If Naturalized, when and where? Citizen of U. S.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

5. How long in Territory? 49 years. County of Maui? Yes.

6. Married or single? Divorced. Number of children, if any? 4.

7. Nationality of Father? Portuguese. Of Mother? Portuguese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Criminal and civil cases.

9. What is your present occupation? Crane operator.

10. If employed, by whom and Name your superiors John T. Moir, Cebut. Vandrasa.

11. What has been your occupation during the past five years? Crane operator.

12. What schools have you attended? St. Anthoney, and Lahaina Luna.

13. What grade in school did you reach? Tenth.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: August 29, 1946. Signature Mr. Manuel Correia, Jr.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 4, 1946, will subject you to be sum-

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

moned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Allan Hart Ezell.

2. Address (a) Home: Waikapu, Maui. Phone No. 4244.

(b) Business Maui Grand Hotel, Wailuku, Maui. Phone No. 925-22275.

3. When and Where born? Carlsbad, New Mexico.

4. If Naturalized, when and where?.....

5. How long in Territory? 6½ yr. County of Maui? 7 mo.

6. Married or single? Married. Number of children, if any? One.

7. Nationality of Father? Amer. of French extraction. Of Mother? Amer. of Irish-Italian extraction.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? District traffic mgr.—Maui County Hawaiian Airlines.

10. If employed, by whom and Name your superiors Hawaiian Airlines. Superiors—John Pugh,

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Robt. Frix, Alex Smith, Stanley C. Kennedy, all in Honolulu.

11. What has been your occupation during the past five years? 1941-1943 office mgr. Hawn Constructors in Maui, Mol. & Oahu, 1943-44 Chief USED, Honolulu Employment & Travel; 1944, to date sta. mgr. & tfc. mgr. Hawn Airlines, Kauai-Oahu, Maui.

12. What schools have you attended? Grade Schools in Texas & California, Texas University & West Point Prep School, San Antonio, Texas; Air Corps Primary Flying School, San Antonio, Texas.

13. What grade in school did you reach? Completed 2 yr. college.

14. Is there any physical reason why you should not sit as a Juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No—unless I am on Lanai or Molokai which are also under my control—with advance notice of at least a week on jury schedule will arrange to be on Maui.

Date: 9-25-46. Signature A. H. Ezell.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 12, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Plaintiff's Exhibit No. 23—(Continued)
(Testimony of Dr. John E. Reinecke.)

Note: Fill out each question in own hand writing, and on or before Oct. 12, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Stanley Cornwell Friel.

2. Address (a) Home: Manawai, Molokai. Phone No. 2W46.

(b) Business Kaunakahai, Molokai. Phone No. 2W17.

3. When and Where born? December 28, 1907, Honolulu.

4. If Naturalized, when and where?.....

5. How long in Territory? 38 years. County of Maui? 16 years.

6. Married or single? Married. Number of children, if any? 5.

7. Nationality of Father? Can. Of Mother? Can.-Hawn.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) none

9. What is your present occupation? General Foreman.

10. If employed, by whom and Name your superiors U. S. Engineer Office, Supply Branch, Kaunakakai, Molokai, Mr. C. L. Zeek, Puunene, Maui, T. H.

11. What has been your occupation during the past five years? Foreman and Construction Supt., U. S. Engineers.

12. What schools have you attended? St. Louis

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

College, McKinley High School, University of Hawaii.

13. What grade in school did you reach? Sophomore (10).

14. Is there any physical reason why you should not sit as a juror? If so, what reason? none.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: 2 October 1946. Signature Stanley C. Friel.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 8, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 8, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Walter William Holt.

2. Address (a) Home: Haiku. Phone No. 4W515.

(b) Business Haiku. Phone No. 4W515.

3. When and Where born? October 28, 1903—Oahu.

4. If Naturalized, when and where?.....

5. How long in Territory? All. County of Maui? 1939-46.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

6. Married or single? Married. Number of children, if any? 3.

7. Nationality of Father? Part-Hawn. Of Mother? Part-Hawn.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None

9. What is your present occupation? Forester.

10. If employed, by whom and Name your superiors Board of Agriculture and Forestry, Mr. Wm. Crosby—(Territorial Forester).

11. What has been your occupation during the past five years? Same as above.

12. What schools have you attended? Punahau and University of Hawaii.

13. What grade in school did you reach? Maximum.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: September 28, 1946. Signature Walter W. Holt.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 12, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Note: Fill out each question in own hand writing, and on or before Oct. 12, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Charles E. Morris.

2. Address (a) Home: Kamiloloa, Molokai. Phone No. 11W49.

(b) Business Kaunakakai, Molokai. Phone No. 4W62.

3. When and Where born? Bayonne, N. J., Nov. 30, 1887.

4. If Naturalized, when and where?.....

5. How long in Territory? Since 1906. County of Maui? 1929.

6. Married or single? Married. Number of children, if any? 2 adults, 2 underage.

7. Nationality of Father? Irish Am. Of Mother? American.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Civil, Judge Banks—also criminal.

9. What is your present occupation? Moving pic exhibitor.

10. If employed, by whom and Name your superiors self.

11. What has been your occupation during the past five years? Same as above.

12. What schools have you attended? Public & 2 universities.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

13. What grade in school did you reach? Graduated.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: 10/6/46. Signature Charles E. Morris.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 9, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 9, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Edwin Kiyoshi Muroki.

2. Address (a) Home: Haiku Maui, Hawaii. Phone No. .....

(b) Business ..... Phone No. .....

3. When and Where born? March 3, 1908 at Paia, Maui, T. H.

4. If Naturalized, when and where?.....

5. How long in Territory? 38 years. County of Maui? 38 years.

6. Married or single? Married. Number of children, if any? 2.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

7. Nationality of Father? Japanese. Of Mother? Japanese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Storekeeper.

10. If employed, by whom and Name your superiors Libby McNeill & Libby. Mr. F. Freteira and Mr. C. Sawyer.

11. What has been your occupation during the past five years? Storekeeper.

12. What schools have you attended? Paia Grammer School (8), Maui High School (4), University of Hawaii (2½).

13. What grade in school did you reach? Junior at U. of H.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: September 30, 1946. Signature E. K. Muroki.

(See Statutes—reverse side)

[Notation in pencil] OK. Grand.

Note: Failure to return this Questionnaire on or before Sept. 6th, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before September 6th, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Toshio Onuma.

2. Address (a) Home: P.O. Box 242—Lanai City, Lanai. Phone No. .....

(b) Business..... Phone No.....

3. When and Where born? Paauhau, Hawaii—Feb. 5, 1919.

4. If Naturalized, when and where?.....

5. How long in Territory? 27 years. County of Maui? 19 years.

6. Married or single? Married. Number of children, if any? 2.

7. Nationality of Father? Japanese? Of Mother? Japanese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Two criminal cases (misdemeanor) in February, 1946.

9. What is your present occupation? Pineapple research worker.

10. If employed, by whom and Name your superiors Hawaiian Pineapple Co. James C. Medcalf, Superintendent.

11. What has been your occupation during the past five years? Same as item 9.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

12. What schools have you attended? Lanai Elementary and Lahainaluna Technical High School.

13. What grade in school did you reach? 12th.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why.....

Date: August 26, 1946. Signature Toshio Onuma.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 9, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 9, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name John Plunkett.

2. Address (a) Home: Keanse, Maui. Phone No. 8W1023.

(b) Business E. M. I. Co. Phone No. 2W581.

3. When and Where born? Lupe, Huelo, Maui.

4. If Naturalized, when and where? .....

5. How long in Territory? 65 yrs. County of Maui? Maui.

6. Married or single? Married. Number of children, if any? 10.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

7. Nationality of Father? Irish. Of Mother? Hawaiian.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Both.

9. What is your present occupation? Foreman E. M. I. Co., Keanse, Maui.

10. If employed, by whom and Name your superiors Robert Bruce.

11. What has been your occupation during the past five years? Foreman E. M. I. Co.

12. What schools have you attended? St. Anthony School & Kamehameha School.

13. What grade in school did you reach? Graduate from Kam School yr. 1900.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? .....

15. Do you claim disqualification or exemption from jury service? .....

Why.....

Date: Oct. 4, 1946. Signature John Plunkett.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 12, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 12, 1946, mail or deliver

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Paul Raymond Rinehart.

2. Address (a) Home: Maunaloa, Molokai, T. H. Phone No. 2W24.

(b) Business Maunaloa, Molokai, T. H. Phone No. 2W24.

3. When and Where born? Dec. 25, 1916—Grant City, Mo.

4. If Naturalized, when and where? .....

5. How long in Territory? 5 yrs. County of Maui? Yes.

6. Married or single? Single. Number of children, if any? .....

7. Nationality of Father? German. Of Mother? Unknown.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Asst. Supt. Libby, McNeill & Libby—Maunaloa, Molokai, T. H.

10. If employed, by whom and Name your superiors Libby, McNeill & Libby. Mr. H. W. Larson.

11. What has been your occupation during the past five years? Army.

12. What schools have you attended? 8 yrs. Grammar School—Grant City, Mo., 4 yrs. High School, 5 yrs. college, U. of Missouri.

13. What grade in school did you reach? Graduate U. of Missouri.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

Why.....

Date: 4 Oct. 1946. Signature Paul R. Rinehart.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 10, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 10, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Albert E. Simpson.

2. Address (a) Home: Hana, Maui. Phone No. 2W1028.

(b) Business Hana, Maui and Honolulu. Phone No. 2W1018, Hon. 68223.

3. When and Where born? Oakland, California.

4. If Naturalized, when and where? .....

5. How long in Territory? 1½ years. County of Maui? 1 year.

6. Married or single? Married. Number of children, if any? 2.

7. Nationality of Father? American. Of Mother? English.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

9. What is your present occupation? Vice president Hana Ranch Co. and Representative in Honolulu of Irwin Estate of S. F.

10. If employed, by whom and Name your superiors Hana Ranch Co. L. Paul and Helene I. Fagan.

11. What has been your occupation during the past five years? Colonel U. S. Army Air Forces and Representative Irwin Estate.

12. What schools have you attended? University of California.

13. What grade in school did you reach? 3rd year University of Calif.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? Yes.

Why? I am the sole representative of the Irwin Estate in the Hawaiian Islands and my business requires my frequent residence in Honolulu for extended periods. Financial loss to my principal would result if I were unable to go there as required.

Date: Oct. 1, 1946. Signature Albert E. Simpson.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 7, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

Note: Fill out each question in own hand writing, and on or before Oct. 7, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Anthony Apo Tam.

2. Address (a) Home: 1236-A Makawao, Ave. Phone No. .....

(b) Business 1236-A Makawao, Ave. Phone No. .....

3. When and Where born? Oct. 25, 1906. Makawao, Maui.

4. If Naturalized, when and where? .....

5. How long in Territory? 39 years. County of Maui? 32 years.

6. Married or single? Single. Number of children, if any?

7. Nationality of Father? Chinese. Of Mother? Chinese.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) Served on a couple of criminal cases.

9. What is your present occupation? Farmer.

10. If employed, by whom and Name your superiors .....

11. What has been your occupation during the past five years? Farmer.

12. What schools have you attended? Makawao, McKinley High, University of Hawaii.

13. What grade in school did you reach? Senior.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 23—(Continued)

14. Is there any physical reason why you should not sit as a juror? If so, what reason? .....

15. Do you claim disqualification or exemption from jury service? No.

Why .....

Date: ..... Signature .....

(See Statutes—reverse side)

Admitted.

Mrs. Bouslag: Then I offer, your Honor——

Judge Biggs: How many pieces, did you say?

Mrs. Bouslog: There are 20 questionnaires, which were all the questionnaires that were in the file for the 15 members of the grand jury.

Judge Biggs: There are 21?

Mrs. Bouslog: Exhibit 22, I offer photostatic copies of questionnaires of individuals, Filipinos, of the 19th and 1st precinct.

Judge Biggs: Same objection. Same ruling.

Miss Lewis: Yes, we had a general objection.

Judge Biggs: Very well. Number 24 then, is next? [267]

Mrs. Bouslog: Your Honor, may I——

Judge Biggs: Yes. I think you need this.

Mrs. Bouslog: Yes, I do.

Q. Doctor Reinecke, this is a questionnaire showing the name of Vincente Figueira, showing that he is a Filipino nationality, and that he reached the 9th grade in school. Did you find any person on the 1947 grand jury whose educational qualifications were no more than the 9th grade?

(Testimony of Dr. John E. Reinecke.)

A. I did.

Judge Biggs: Let me have that question.

(Question read by reporter.)

Q. Specifically, two on the 1947 grand jury had less than a 9th grade education?

A. Of these 21 people, Edmund Nunes had an 8th grade education, and Charles Edward Thompson also had an 8th grade education.

Miss Lewis: I did not get those names.

Judge Biggs: Repeat those, Mr. Witness.

A. Edmund Nunes, and Charles Edward Thompson.

Miss Lewis: Are they two?

Judge Biggs: Two, Nunes and Thompson.

Judge Metzger: Was that 9th or less than the 9th?

Mrs. Bouslog: Dr. Reinecke?

A. These two gentlemen had an 8th grade education, as compared with Mr. Figueira. He had a 9th grade education.

Judge Metzger: What I had in mind, did anyone else [268] compare with him on the 9th grade education?

A. Yes, your Honor, Edwin S. Bowmer, had a 9th grade education. Edwin S. Bowmer.

Mrs. Bouslog: With the stipulation of counsel, perhaps I can cut this short if I ask Mr. Crockett: I have here nine questionnaires which were introduced in evidence in the other case, and which are now before the court, all from persons of Filipino

(Testimony of Dr. John E. Reinecke.)

nationality, with 9th grade educations. Here is one with an 8th grade education—three with an 8th grade education—8th or 9th grade education, which were marked "questionable" on the return of the jury commissioner.

Judge Biggs: You want that admitted in evidence?

Mrs. Bouslog: They have been admitted in evidence.

Judge Biggs: They have been admitted? What is the stipulation?

Mrs. Bouslog: The stipulation is that they were marked "questionable" on the jury commissioner's records.

Mr. Crockett: That appears on the face of the questionnaire itself.

Judge Biggs: Does it also appear on the jury commissioner's records?

Mr. Crockett: I think so.

Mrs. Bouslog: These notations up here are my notations.

Judge Biggs: The question is whether or not you [269] are willing to stipulate that they were questionable on the jury commissioner's records?

Mr. Crockett: Well, I thought it was on there.

Mrs. Bouslog: No. They are all referred to in the transcript.

Mr. Crockett: I will so stipulate. We reserve the right to check them and see if that is correct.

Judge Biggs: You may check. I admit it subject

(Testimony of Dr. John E. Reinecke.)

to your check. Unless the check brings forward something, the admission will be subject to a motion to strike.

Mrs. Bouslog: I have here a questionnaire of Vincente C. Saloricman, he shows an 8th grade education, whose questionnaire, Mr. Crockett—can you stipulate to this, is shown "not qualified?"

Mr. Crockett: Does that appear in the transcript?

Mrs. Bouslog: Yes, Mr. Crockett.

Mr. Crockett: Do you recall that page?

Mrs. Bouslog: I will give you the page, 331.

Q. Will you examine this questionnaire, Doctor Reinecke, and say if on its face it appears to state qualifications equal to those of persons for whom you have questionnaires who were on the 1947 grand jury?

Mr. Crockett: Was that question directed to education?

Mrs. Bouslog: The whole questionnaire and qualification, [270] the witness made the examination of the other questionnaires.

Mr. Crockett: The comparison is on the basis of education?

Mrs. Bouslog: Education is the only basis that is shown to differentiate.

Mr. Crockett: It is not a question directed to education, is it?

Mrs. Bouslog: Yes.

A. So far as education is concerned, Mr. Saloric-

(Testimony of Dr. John E. Reinecke.)

man seems to have the same qualifications as Mr. Thompson and Mr. Nunes.

Judge Metzger: There are 23 on the jury panel. There are only 21 of these questionnaires, two of them are—did not respond to questionnaires?

Mrs. Bouslog: No, your Honor. Let me explain what has been stipulated, what appears in the record. The grand jury commissioners had a file which purported to contain the 1947 questionnaires for the grand jury list, this whole list of 50, but all that they had was 20, only 20 questionnaires of the people on the list. So that these are all there are. Some of the persons who were actually drawn, no questionnaires appear for them in that particular file.

Judge Biggs: There was a request pending of Mr. Crockett's, what was that? I have forgotten it. You were to look at something. [271]

Mr. Crockett: What I asked counsel just a minute ago, was the page of the transcript. I just got the page, 328, or 330, I believe it is. This matter of the questionnaires, I have not had a chance to check it.

Mrs. Bouslog: If Mr. Crockett will consent, subject to objection at a later time, I will—these have been marked already.

Judge Biggs: Very well. We will let the question and the answer stand, subject to Mr. Crockett's possible revision as to the statements made by Mrs. Bouslog.

(Testimony of Dr. John E. Reinecke.)

Q. Doctor Reinecke, from your knowledge of the racial composition of the County of Maui, and from your analysis of the 1947 grand jury list, would you say that it represents a cross section of the community of Maui County?

Judge Biggs: Just a minute. Let me have that question.

(Question read by the reporter.)

Mr. Crockett: We object to that, if your Honor please, and submit that is calling for the conclusion of this witness, and he has not shown himself qualified to state whether or not it formed a cross section, particularly with reference to the standard laid down by the Supreme Court in cases along this line. There is not a single word or a single bit of testimony which shows that he knows anything about the actual qualifications of those persons when it [272] comes to their selection for the purpose of jury duty. Merely because a man is a citizen, has a citizenship, merely because he has a 6th to an 8th grade education is not sufficient.

Judge Biggs: I think I get your point. I am in some doubt as to whether a showing that no member of the Filipino nationality is upon a jury may not be of some significance. And the question may be directed to that. We have grave doubt as to whether or not the conclusion is particularly helpful, evidentially, but rather than exclude the evidence, we will receive it, subject to a motion to strike.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24

[Notation in pencil] Not qualified.

Note: Failure to return this Questionnaire on or before Oct. 4, 1946 will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946 mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Vincente Compania Saloricman.

2. Address (a) Home: Lanai City, Lanai, Box 985. Phone No. .....

(b) Business .....

3. When and where born? Lahaina, Maui, July 19, 1924.

4. If Naturalized, when and where?.....

5. How long in Territory? 22. County of Maui? Yes.

6. Married or single? Married. Number of children, if any? One.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Stevedore.

10. If employed, by whom and name your superiors Hawaiian Pine Co. Mr. Fraser.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

11. What has been your occupation during the past five years? Hawaiian Pine Co., Brakeman Krr. Co., then army.

12. What schools have you attended? Lanai City.

13. What grade in school did you reach? Eighth.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No experience.

15. Do you claim disqualification or exemption from jury service? Disqualification. Why? No high school education and no experience.

Date: 9/26/46. Signature Vincinte C. Saloricman.

(See Statutes—reverse side)

Note: Failure to return this Questionnaire on or before Oct. 4, 1946 will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946 mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Narcisso Sipe.

2. Address (a) Home: P. O. Box 122, Lanai City, Lanai. Phone No. None.

(b) Business None. Phone No. .....

3. When and where born? Nov. 3, 1915, Olowalu, Maui, T. H.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

4. If Naturalized, when and where? American citizen.

5. How long in Territory? 31 years. County of Maui? 31 years.

6. Married or single? Single. Number of children, if any? None.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Crane fireman.

10. If employed, by whom and name your superiors Hawaiian Pineapple Co.

11. What has been your occupation during the past five years? Pineapple loader.

12. What schools have you attended? Kamehameha III School.

13. What grade in school did you reach? 7th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? None.

Why .....

Date: Sept. 26, 1946. Signature Narcisso Sipe.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

or before Oct. 8, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 8, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Vincente Engoring.

2. Address (a) Home: Haiku, Maui. Phone No. .....

(b) Business ..... Phone No. .....

3. When and Where born? Feb. 10, 1925—at Kapahulu, Maui.

4. If Naturalized, when and where? .....

5. How long in Territory? ..... County of Maui? .....

6. Married or single? Single. Number of children, if any? .....

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Libby McNeill & Libby.

10. If employed, by whom and name your superiors Frank Fieteira.

11. What has been your occupation during the past five years? C.C.C. 1½ year. U.S.E.D. 2 years. Hana Plantation 1 year. A.T.S. ½ year.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

12. What schools have you attended Hana school.

13. What grade in school did you reach? 9th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? .....

15. Do you claim disqualification or exemption from jury service? .....

Why .....

Date: Oct. 3, 1946. Signature Vincente Engoring.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 9, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 9, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Salvador Seno.

2. Address (a) Home: Kuiaha, Maui Phone No. None.

(b) Business ..... Phone No. .....

3. When and Where born? Kohala, Hawaii, June 20th, 1913.

4. If Naturalized, when and where? .....

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

5. How long in Territory? 33 years. County of Maui? 19 yrs.

6. Married or single? Married. Number of children, if any? 4

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Carpenter.

10. If employed, by whom and name your superiors Edmund Ling.

11. What has been your occupation during the past five years? Laborer 2 yrs. for U. S. Engineers, 3 yrs. at Kahulin N. A. Station, carpenter.

12. What schools have you attended? Kohala grammar and Junior High Haiku School and Maui High.

13. What grade in school did you reach? 9th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? No.

15. Do you claim disqualification or exemption from jury service? No.

Why .....

Date: Oct. 6, 1946. Signature Salvador Seno.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 8, 1946, will subject you to be sum-

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

moned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 8, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Gilbert Eufronio Gonzado.

2. Address (a) Home: Baldwin Camp Hse. No. 31. Phone No. None.

(b) Business N.A.S. Kahului, Maui Phone. No. .....

3. When and Where born? Kapulena, Hawaii.

4. If Naturalized, when and where? .....

5. How long in Territory? Life (27½ yrs.). County of Maui? Eight yéars.

6. Married or single? Married. Number of children, if any? Three.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Cheffuer.

10. If employed, by whom and name your superiors N.A.S. Lt. Com. Jones and Lytle.

11. What has been your occupation during the past five years? Soldering U. S. Army.

12. What schools have you attended? Kapulena Grammar School, Kukuihaele Grammar School Konokoa High School and Kalakaua High.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

13. What grade in school did you reach? Nine.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

Why .....

Date: Oct. 3, 1946. Signature Gilbert E. Gonzado.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 9, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 9, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Francis Damion Segundo.

2. Address (a) Home: Haiku, Maui. Phone No. .....

(b) Business ..... Phone No. .....

3. When and Where born? July 16, 1922, Honolulu.

4. If Naturalized, when and where? .....

5. How long in Territory? 24 years. County of Maui? .....

6. Married or single? Married. Number of children, if any? 3.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

7. Nationality of Father? Filipino. Of Mother? Hawaiian.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Laborer.

10. If employed, by whom and name your superiors Libby McNeill.

11. What has been your occupation during the past five years? Truck driver.

12. What schools have you attended? Haiku School.

13. What grade in school did you reach? 8th.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? .....

15. Do you claim disqualification or exemption from jury service? .....

Why .....

Date: Oct. 3, 1946. Signature Francis Damion Segundo.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 4, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946, mail or deliver

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Frederick Bibilone Saranillio.

2. Address (a) Home: P.O. Box No. 858, Lanai City. Phone No. None.

(b) Business none. Phone no. none.

3. When and Where born? Apr. 8, 1924, Mt. View, Hawaii, T. H.

4. If Naturalized, when and where? U.S.A.

5. How long in Territory? 22 years. County of Maui? .....

6. Married or single? Married. Number of children, if any? 1.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Stevedore.

10. If employed, by whom and name your superiors Manuel Pavao.

11. What has been your occupation during the past five years? Truck driver, Army 3 mo. medical discharge.

12. What schools have you attended? Mt. View Hawaii, T. H.

13. What grade in school did you reach? 8th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? Not enough schooling.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

15. Do you claim disqualification or exemption from jury service? No.

Why .....

Date: 9/25/46. Signature Frederick Saranillio.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 3, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 3, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Douglas Marcelino Galoya.

2. Address (a) Home: Lanai City, Lanai. Phone No. .....

(b) Business ..... Phone No. .....

3. When and Where born? Aug. 8th, 1920, Kahulau, Oahu.

4. If Naturalized, when and where? .....

5. How long in Territory? 26 years. County of Maui? .....

6. Married or single? Married. Number of children, if any? None.

7. Nationality of Father? Filipino. Of Mother? Filipino.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Truck driver.

10. If employed, by whom and name your superiors Hawaiian Pine Co. Manuel Perry, W. B. Caldwell.

11. What has been your occupation during the past five years? Truck driving.

12. What schools have you attended? Waianae School.

13. What grade in school did you reach? 8th.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? .....

15. Do you claim disqualification or exemption from jury service? Lack of education.

Why .....

Date: 9-26-46. Signature Douglas M. Galoya.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 3, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 3, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

1. Full name John Cornelio.

2. Address (a) Home: Lanai City, Lanai. Phone No. None.

(b) Business None. Phone No. None.

3. When and Where born? Nuilii Kohala, Hawaii.

4. If Naturalized, when and where? .....

5. How long in Territory? 27 years. County of Maiu?.....

6. Married or single? Single. Number of children, if any? .....

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Assistant gang luna.

10. If employed, by whom and name your superiors Hawaiian Pine Apple Co.

11. What has been your occupation during the past five years? Tractor operator, assist gang luna.

12. What schools have you attended? Mabapola, Hawaii.

13. What grade in school did you reach? 8 grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? None.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

Why .....

Date: Sept. 27, 1946. Signature John Cornelio.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 3, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 3, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Ted Simplicio Herolaga.

2. Address (a) Home: P.O. Box 13, Lanai. Phone No. .....

(b) Business ..... Phone No. .....

3. When and Where born? December 4, 1920. Hilo, Hawaii.

4. If Naturalized, when and where? .....

5. How long in Territory? 25 years. County of Maui? 6 years.

6. Married or single? Single. Number of children, if any? .....

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

9. What is your present occupation? Truck driver.

10. If employed, by whom and name your superiors Hawaiian Pineapple Co.

11. What has been your occupation during the past five years? 3 years operating tractor. 2 years truck driver.

12. What schools have you attended? Waianae School.

13. What grade in school did you reach? Nine years.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? Not enough education.

15. Do you claim disqualification or exemption from jury service? Yes.

Why Not enough education.

Date: September 27, 1946. Signature Ted S. Herolaga.

(See Statutes—reverse side)

[Notation in pencil] Questionable.

Note: Failure to return this Questionnaire on or before Oct. 4, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 4, 1946, mail or deliver

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name George Ramaila.

2. Address (a) Home: Lanai City, Lanai. Phone No. .....

(b) Business None. Phone No. .....

3. When and Where born? Maui. 1915, Aug. 8.

4. If Naturalized, when and where? Citizen.

5. How long in Territory? 31 years. County of Maui? For the past 9 years.

6. Married or single? Married. Number of children, if any? Three.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

9. What is your present occupation? Truck driver.

10. If employed, by whom and name your superiors Hawaiian Pine Co. Manager is D. Frazer.

11. What has been your occupation during the past five years? Truck driving.

12. What schools have you attended? Hilo High School Shop.

13. What grade in school did you reach? 8th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? No.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

Why .....

Date: September 26, 1946. Signature George Ramaila.

(See Statutes—reverse side)

[Notation in pencil] Qualified.

Note: Failure to return this Questionnaire on or before Oct. 3, 1946, will subject you to be summoned to appear before the Jury Commissioners as required by law.

To: Prospective Jurors, Circuit Court, Second Circuit.

Note: Fill out each question in own hand writing, and on or before Oct. 3, 1946, mail or deliver to: Jury Commissioners, Circuit Court, Second Circuit, Judiciary Building, Wailuku, Maui.

1. Full name Carl Larato Herolaga.

2. Address (a) Home: Lanai City, T. H. Phone No. .....

(b) Business None. Phone No. .....

3. When and Where born? Hilo, Hawaii, 12-9-18.

4. If Naturalized, when and where? .....

5. How long in Territory? ..... County of Maui? .....

6. Married or single? Married. Number of children, if any? 4.

7. Nationality of Father? Filipino. Of Mother? Filipino.

8. What experience have you had as a Juror? (Indicate whether Criminal or Civil case) None.

(Testimony of Dr. John E. Reinecke.)

Plaintiff's Exhibit No. 24—(Continued)

9. What is your present occupation? Truck driver.

10. If employed, by whom and name your superiors Hawaiian Pine Co.

11. What has been your occupation during the past five years? Truck driver.

12. What schools have you attended? Waianae School.

13. What grade in school did you reach? 8th grade.

14. Is there any physical reason why you should not sit as a juror? If so, what reason? None.

15. Do you claim disqualification or exemption from jury service? None.

Why .....

Date: September 29, 1916. Signature Carl L. Herolaga.

(See Statutes—reverse side)

Admitted.

Mrs. Bouslog: I think from what the court said that a statement by Mr. Crockett this morning has misled the court as to what the plaintiffs are trying to prove. Our function is not merely that there is no Filipino—has never been a Filipino on the grand jury, our objection to the—because of the fact that there is no foreign laborer which is represented——

Judge Biggs: Well, you need not argue this point.

(Testimony of Dr. John E. Reinecke.)

Mrs. Bouslog: There is also the racial economic lines——

Judge Biggs: This question does go directly to the question of Filipinos on the grand jury.

Mrs. Bouslog: It was not intended to, your Honor.

Judge Biggs: How else can it go, please? [273]

Mrs. Bouslog: We are talking about a cross section, your Honor.

Judge Biggs: Your question is based on race.

Mrs. Bouslog: That's right, but also not only Filipinos, but the whole question of Caucasian and non-Caucasian, haole, and non-haole, as well as Filipinos.

Judge Biggs: Well, I think we will receive the answer, at any rate, subject to a motion to strike. Answer the question, please.

A. I don't think it forms a true cross section of the population of Maui County.

Mr. Crockett: May I move to strike——

Judge Biggs: It is already subject to a motion to strike. We will deny the motion to strike at this time, with leave to renew it at the close of the case.

Mr. Crockett: Very well.

Judge Biggs: Unless you want to make a statement for the record.

Mr. Crockett: What I had in mind, if the court please was this point: That counsel in her question used the term cross section. There is no showing

(Testimony of Dr. John E. Reinecke.)

that this witness knows or understands what is meant by cross section in the light of the decisions of the Supreme Court.

Judge Biggs: We are going into argument on a point which is really one for subsequent briefing, perhaps.

Mrs. Bouslog: May I ask the witness what he means [274] by cross section, as he used it in his answer?

Judge Biggs: I think the term cross section has a well defined meaning. Very well, ask the question. We will take the answer. What do you mean by cross section? What do you mean by a cross section?

A. I mean by a cross section a representation of all the ethnic groups of Maui County in somewhat like fair proportion to their total number in the population.

Judge Biggs: I think that is what he means.

Q. Would your answer be the same in respect—if the question were directed to economic representation on the 1947 grand jury for Maui County?

A. Yes. It would.

Mrs. Bouslog: You may cross examine.

Judge Biggs: This concludes your questions of this witness on direct examination?

Mrs. Bouslog: On direct examination, yes.

Miss Lewis: It is understood that last question is also subject to the motion to strike of the same nature?

(Testimony of Dr. John E. Reinecke.)

Judge Biggs: Very well.

Miss Lewis: Could I have a minute?

Judge Biggs: Yes. We will recess for five minutes.

(Recess) [275]

Mr. Crockett: We have no cross-examination.

Judge Biggs: That's all, thank you.

(The witness was excused.)

Mrs. Bouslog: Your Honor, I would like to offer at this time all of the Movant's exhibits in the challenge before Judge Cristy, Criminal Nos. 2412 and 2413 in the Circuit Court of the Second Judicial Circuit, with the exception of those which have already been specifically offered in connection with testimony given here. They are a part of the record that was stipulated to with the understanding that the exhibits would be accepted if produced and offered. I will have to ask the Court's permission to substitute copies of the documents for the Court and I will do my very best to get three copies if they will help the Court's convenience.

Judge Biggs: Is there any objection except as to relevancy?

Miss Lewis: We registered our general objection at the opening of the trial.

Judge Biggs: Very well, No. 25.

(Thereupon the documents referred to were marked Plaintiff's Exhibit No. 25 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 25

Circuit Court, Second Circuit, Territory of Hawaii

Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII,

vs.

ABRAHAM MAKEKAU, et. al., and DIEGO BARBOSA, et. al.,

MOVANTS' EXHIBIT A

Filed September 15, 1947 at 10:01 a.m. for identification.

D. M. TALLANT,
Deputy Clerk of said Court.

Maui Agricultural Co., Ltd.

Officers
H. A. Baldwin, president*
J. P. Cooke, vice president
R. G. Bell, vice president
J. W. Speyer, vice president
J. F. Morgan, treasurer
J. T. Waterhouse, secretary
A. H. Gorie, assistant treasurer
F. E. Steere, Jr., assistant treasurer
D. L. Oleson, assistant secretary
G. G. Kinney, auditor

Directors
A. F. Baldwin
J. P. Cooke

Plaintiff's Exhibit No. 25—(Continued)

R. G. Bell
Edwin Benner, Jr.
J. T. Waterhouse
J. W. Cameron
D. A. Cooke
C. R. Hemenway
J. F. Morgan
William Pullar

Pioneer Mill Company, Ltd.

Officers
H. A. Walker, president
H. P. Faye, vice president
G. W. Sumner, vice president
E. H. Wodehouse, vice president
S. M. Wodehouse, treasurer
W. T. Vorfeld, secretary
J. E. Ednie, assistant secretary & treasurer
H. C. Eichelberger, assistant secretary & treasurer
Young, Lamberton & Pearson, auditors
(At San Francisco Transfer Office)
P. A. Drew, vice president
R. E. Searby, vice president
F. K. Bottomly, assistant treasurer

Directors
H. M. Dowsett
H. P. Faye
H. V. von Holt
S. M. Lowrey
W. H. McInerny

Plaintiff's Exhibit No. 25—(Continued)

G. W. Sumner
H. A. Walker
G. P. Wilcox
E. H. Wodehouse

Hawaiian Commercial & Sugar Co., Ltd.

Officers

F. F. Baldwin, president
J. P. Cooke, vice president
R. G. Bell, vice president
A. L. Castle, vice president
J. F. Morgan, treasurer
J. T. Waterhouse, secretary
F. E. Steere, assistant treasurer
A. H. Gorie, assistant treasurer
D. L. Oleson, assistant secretary
G. G. Kinney, auditor

Directors

F. F. Baldwin
R. G. Bell
A. L. Castle
J. P. Cooke
C. R. Hemenway
J. F. Morgan
J. T. Waterhouse

Wailuku Sugar Company

Officers

P. E. Spalding, president
S. L. Austin, vice president
Starr Bruce, vice president

Plaintiff's Exhibit No. 25—(Continued)

R. G. A. Crowe, assistant vp and treasurer
H. C. Babbitt, assistant treasurer
C. F. Honeywell, secretary
G. R. Ewart, III, assistant secretary
Young, Lamberton & Pearson, auditors

Directors
S. L. Austin
T. A. Cooke
R. G. A. Crowe
H. T. Kay
A. Lewis, Jr.
M. A. Robinson
P. E. Spalding

Alexander & Baldwin, Ltd. (Sugar and Pine Factors

Officers
F. F. Baldwin, president
H. A. Baldwin, vice president*
R. G. Bell, vice president
J. W. Speyer, vice president
A. L. Dean, vice president
J. F. Morgan, treasurer
J. T. Waterhouse, secretary
A. H. Gorie, assistant treasurer
F. E. Steere, Jr., assistant treasurer
D. L. Oleson, assistant secretary
J. B. Hurd, assistant secretary
G. G. Kinney, auditor

Directors
F. F. Baldwin
R. G. Bell

Plaintiff's Exhibit No. 25—(Continued)

J. P. Cooke
C. F. Damon
J. W. Speyer
C. F. Damon
A. L. Dean
C. R. Hemenway
J. F. Morgan
J. T. Waterhouse
J. P. Winne

California Packing Corporation

Officers

Robert M. Barthold, president
Alfred W. Eames, vice president
Albert M. Lassiter, vice president
Roy L. Pratt, vice president
Ralph Brown, vice president
George R. Ward, vice president
Stanley Powell, vice president
Harold Z. Baldwin, secretary
Humphrey L. Jone, treasurer
William H. Carr, comptroller
Walter H. Levy, purchasing agent

Directors

Robert M. Barthold
Leonard E. Wood
Alfred W. Eames
Albert M. Lassiter
Roy L. Pratt
Balfour D. Adamson

Plaintiff's Exhibit No. 25—(Continued)

Ralph Brown
William Fries
Andrew G. Griffin
Willard Griffin
Ralph E. Sanborn
C. K. McIntoch
Stanley Powell
Marshall P. Madison
Nion R. Tucker
George R. Ward
Henry Nichols
A. K. Tichenor
L. W. Jongeneel
Ira S. Lillich
N. B. Livermore
George B. Robbins

Maui Electric Company

Officers
William Walsh, president
D. T. Fleming, vice president
D. C. Lindsay, vice president
W. H. Balthis, vice president
A. S. Spenser, secretary
Mrs. Alta D. Craft, assistant secretary
J. Walter Cameron, treasurer
Colin C. Murcoch, assistant treasurer

Directors
W. H. Balthis
Frank W. Broadbent

Plaintiff's Exhibit No. 25—(Continued)

J. Walter Cameron
E. S. Elmore
D. T. Fleming
Mrs. Helen V. Foss
J. H. Kunewa
D. C. Lindsay
William Walsh
W. K. Watkins

Libby, McNeil & Libby

Officers

D. W. Creedon, president & general manager
Leroy J. Taylor, vice president
S. A. Halmon, vice president
C. S. Bridges, vice president
V. E. Willkie, vice president
P. M. Rodgers, vice president
J. T. Knowles, vice president
Earl Price, vice president
F. T. Slivon, comptroller & secretary
S. M. Jaspar, treasurer
A. E. Strand, assistant comptroller
E. J. Becker, assistant secretary
L. E. Curry, assistant treasurer
W. H. Long, general attorney

Directors

E. B. Cosgrove
D. W. Creedon
C. F. Glore
S. A. Holman
A. T. Kearney

Plaintiff's Exhibit No. 25—(Continued)

W. H. Long
C. H. Swift
Leroy J. Taylor
E. E. Willkie

Hawaiian Pineapple Co., Ltd.

Officers
H. A. White, president
A. G. Budge, vice president
C. C. Cadagan, vice president
Boud MacNaughton, vice president
H. E. Overesch, vice president
H. E. MacConaughey, vice president
R. M. Botley, vice president
George W. Burgess, assistant vice president
F. P. Mehrlick, assistant vice president
J. Dickson Pratt, assistant vice president
R. R. Rohlfing, assistant vice president
John Shafer, assistant vice president
C. A. White, assistant vice president
E. B. Woodworth, assistant vice president
Roy N. Figueroa, treasurer
K. B. Barnes, secretary
James Cruickshank, assistant treasurer
Bruce Kinsley, assistant treasurer
James H. Tabor, assistant secretary
V. R. Williams, assistant secretary and treasurer
T. E. Leach, assistant secretary and treasurer

Directors
James D. Dole
A. G. Budge

Plaintiff's Exhibit No. 25—(Continued)

E. W. Carden
S. N. Castle
C. F. Damon
C. J. Henderson
Linvingston Jenks
F. D. Lowery
Theodore F. Trent
George S. Waterhouse
Henry A. White
J. Howard Worrall

American Factors, Ltd. (Sugar)

H. A. Walker, president
H. P. Faye, vice president
G. W. Sumner, vice president
R. E. White, vice president
W. W. Monahan, vice president
M. L. Berlinger, vice president
S. M. Lowrey, treasurer
W. T. Vorfeld, secretary
J. E. Ednie, asst. secy. and treas.
H. C. Eichelberger, asst. treas. and secy.
Young, Lamberton & Pearson, auditors
P. A. Drew, vice president (at San Francisco)

Directors

C. E. S. Burns
E. J. Greaney
W. F. Dillingsham
H. P. Faye
G. W. Fisher

Plaintiff's Exhibit No. 25 (Continued)

C. R. Hemenway
U. J. Rainalter
S. M. Lowrey
G. W. Sumner
H. A. Walker
G. P. Wilcoxx

C. Brewer & Co., Ltd.

Officers
P. E. Spalding, president
S. L. Austin, vice president
H. T. Kay, vice president
Starr Bruce, vice president
R. G. A. Crowe, asst. vice pres. & treas.
W. J. Maze, assistant vice pres.
H. C. Babbitt, assistant treasurer
J. J. G. Webster, assistant treasurer
C. W. Smith, assistant treasurer
C. F. Honeywell, secretary
Walter E. Smith, assistant secretary
F. A. Bechert, assistant secretary
A. H. Armitage, assistant secretary
G. R. Weart, III, assistant secretary
Young, Lamberton & Pearson, auditors

Directors
S. L. Austin
Starr Bruce
T. A. Cooke
Carter Galt
H. T. Kay
R. G. A. Crowe

Plaintiff's Exhibit No. 25 (Continued)

A. Lewis, Jr.
R. McCorriston
P. E. Spalding

American Can Company
(Mainland)

D. W. Figgis, president
Carlyle H. Black, executive vice president
G. H. Kellogg, vice president
A. R. Pfelz, vice president
R. C. Taylor, vice president
J. A. Steward, vice president
C. J. Preis, vice president
E. H. Bell, vice president
W. C. Stolk, vice president
R. L. Sullivan, vice president
W. J. Wardell, vp and comptroller
Richard H Berger, secretary & treasurer

Directors
Morris J. Sullivan, chairman
Arthur Choate
William Ewuing
George G. McMurtry
Edward S. Moore
Paul Moore
D. W. Figgis
James B. Taylor
Roy E. Tomlinson
Carlyle H. Black
G. H. Kellogg
Charles E. Auchincloss

Plaintiff's Exhibit No. 25 (Continued)

Russell C. Taylor
S. Sloan Colt
W. J. Wardell

Maui Pineapple Co.

Officers
J. Walter Cameron, president
Joseph P. Cooke, vice president
Rolland G. Bell, vice president
William P. Tuttle, vice president
James F. Morgan, treasurer
John T. Waterhouse, secretary
Fred E. Steere, Jr., assistant treasurer
E. Percy Lydgate, assistant treasurer
David E. Oleson, assistant secretary
Charles R. DuBois, assistant secretary

Directors
J. Walter Cameron
Joseph P. Cooke
Rolland G. Bell
William P. Tuttle
James F. Morgan
John T. Waterhouse
Samuel A. Baldwin
A. L. Dean

Molokai Ranch, Ltd.

Officers
George P. Cooke, president & manager
Harrison R. Cooke, secretary
Robert M. Cooke, vice president

Plaintiff's Exhibit No. 25 (Continued)

Ralph B. Johnson, vice president
C. C. Spalding, vice president
Cooke Trust, treasurer and agent

Directors
Harrison R. Cooke
Robert M. Cooke
Ralph B. Johnson
C. C. Spalding
C. M. Cooke, III
A. H. Rice, Jr.
G. Paul Cooke, Jr.

Hana Ranch (Kaeleku Sugar Co.)

Officers
Albert G. Simpson, president
P. E. Spalding, vice president
S. L. Austin, vice president
P. I. Fagan, vice president
R. G. A. Crowe, treasurer
W. E. Harrison, assistant treasurer
C. Werner Smith, auditor

Directors
Albert G. Simpson
P. E. Spalding
S. L. Austin
P. I. Fagan
W. E. Harrison
H. T. Kay

Plaintiff's Exhibit No. 25 (Continued)

Ulupalakua Ranch, Ltd.

Officers

F. F. Baldwin, president
J. Platt Cooke, vice president
Rolland G. Bell, vice president
Edward K. Baldwin, vice president
James F. Morgan, treasurer
John T. Waterhouse, secretary

Directors

F. F. Baldwin
J. Platt Cooke
Rolland G. Bell
Edward K. Baldwin
James F. Morgan

Baldwin Packers

Frank F. Baldwin, president
Sam. A. Baldwin, vice president
R. G. Bell, vice president
J. Walter Cameron, treasurer
Edward H. K. Baldwin, secretary
J. F. Morgan, assistant treasurer
J. T. Waterhouse, assistant secretary

Directors

F. F. Baldwin
S. A. Baldwin
Rolland G. Bell
J. Walter Cameron
Edward H. K. Baldwin
D. T. Fleming

Plaintiff's Exhibit No. 25 (Continued)

R. H. Baldwin
Joseph P. Cooke
Dwight H. Baldwin

Kahului Railroad Co.

F. F. Baldwin, president
J. Platt Cooke, vice president
R. G. Bell, vice president
John W. Speyer, vice president
James F. Morgan, treasurer
Albert H. Gorie, assistant treasurer
John T. Waterhouse, secretary
Fred E. Steere, Jr., assistant treasurer
David L. Oleson, assistant secretary
William Walsh, general manager

Directors
F. F. Baldwin
J. Platt Cooke
R. G. Bell
James F. Morgan

East Maui Irrigation Co.

H. A. Baldwin, president* (died 10/8/46)
F. F. Baldwin, vice president
J. Platt Cooke, vice president
R. G. Bell, vice president
Asa F. Baldwin, vice president
James F. Morgan, treasurer
John T. Waterhouse, secretary
F. E. Steere, Jr., assistant treasurer
David L. Oleson, assistant secretary

Plaintiff's Exhibit No. 25 (Continued)

Directors
H. A. Baldwin*
F. F. Baldwin
J. Platt Cooke
R. G. Bell
Asa F. Baldwin
James F. Morgan

Haleakala Ranch, Ltd.

Officers
H. A. Baldwin, president*
R. H. Baldwin, vice president
J. Platt Cooke, vice president
Samuel A. Baldwin, treasurer
Leslie Bisset, secretary
James F. Morgan, assistant treasurer

Directors
H. A. Baldwin*
R. H. Baldwin
Samuel A. Baldwin
Leslie Bisset
J. Walter Cameron

Admitted.

Plaintiff's Exhibit No. 25 (Continued)

Circuit Court, Second Circuit, Territory of Hawaii

Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et. al., and DIEGO BARBOSA, et. al.

MOVANTS' EXHIBIT 5

Table I

Caucasians and Non-Caucasians in the Population and Grand Jury Panel of Maui County

In the Population:	Caucasian	%	Non-Caucasian	%	Total
[1]Male and Female	6,989	12.5	48,991	87.5	55,980
[2]Male, 21 yrs. & over in 1940	2,027	11.2	16,038	88.8	18,065
[3]Male, 21 to 60 yrs. in 1947	2,208	11.2	17,517	88.8	19,725
[4]Male, 21-60 yrs., citizens	2,074	16.2	10,747	83.8	12,821
[5]Male, 21-60 yrs., citizens with 4 or more yrs. of school attendance	2,172	15.5	11,850	84.5	14,022
With 8 yrs. or more of school attendance	1,787	17.0	8,735	83.0	10,522
[6]Registered voters, 1946	1,542	22.9	5,186	77.1	6,728

In the Population:	Caucasian	%	Non-Caucasian	%	Total
[7]1947 Panel	28	56.	22	44.	50
1946 Panel	36	72.	14	28.	50
1945 Panel	32	64.	18	36.	50
1944 Panel	33	66.	17	34.	50
1943 Panel	32	64.	18	36.	50
1942 Panel	29	58.	21	42.	50

Footnotes to Table I

[1]2nd Series. Characteristics of the Population, Hawaii: Caucasians as defined therein. Non-Caucasians include all others.

[2]Ibid., p. 28, Table 19

[3]Correction for 7-yr. discrepancy.

No. to be added:

No. of male Caucasians reaching 21 yrs. between 1940-1947: 522

No. of male Non-Caucasians reaching 21 yrs. between 1940-1947; 4,089 (Calculated from Table 19, p. 28, using brackets "15-19 yr." and ¼ of "20-24 yrs." and "10-14 yrs."

No. to be deducted:

No. of male Caucasians over 60 years in 1947: 341

No. of male non-Caucasians over 60 years in 1947: 2-610

(Ibid., Table 19, p. 28)

Plaintiff's Exhibit No. 25—(Continued)

[4]Correction for citizenship, Ibid., Table 18, p. 27 and p. 28
Total Caucasian, non-citizens, outside of Honolulu: 498 (3%)
Total non-citizens outside of Honolulu: 16,078 (100%)
No. of non-citizens, males, 21 yrs. and over in 1940:
3,941 plus
6,550 Filipinos

10,491
10,491 × 3% equals 315 Caucasians
10,491 — 315 equals 10,176 non-Caucasians
2,208 — 315 equals 1,893
17,517 — 10,176 equals 7,341
Apply correction as in [3]. Add 1,927 Japanese and Filipinos who are not citizens and over 60 years in 1947.

[5]4 years of school attendance:
Male, 25 yrs. old & over with 4 yrs. of school completed: 8,420 (p. 27, Ibid.)
Estimated no. of those becoming 21 yrs. old with 4 yrs. & over of school attendance between 1940-1947: 12,573 (p. 27, Ibid.)
Total no. between 14-24 yrs. in and out of school attendance. All must have at least 4 yrs. of schooling in accordance with Territorial compulsory education laws.
Male over male and female ratio for Territory minus Honolulu, p. 33, Ibid:
5,977 divided by 11,343 equals 52%.
52% times 12,573 equals 6,626 educated males.
Of the 6,626, 862 are male Caucasians, p. 28, Ibid., taking "14-24 yrs." bracket. Hence, educated, non-Caucasians equals 6,626 minus 862 equals 5,764. From p. 28 Ibid. 1,651 Caucasians over 24 yrs. old. If all are assumed to have the required educational qualification, we get 6,769 non-Caucasians qualified: i.e., 8,420 (see above) minus 1,651. Hence, those qualified educationally:

Caucasian Male	Non-Caucasian Male
862	5,764
1,651	6,769
2,513	12,533

[6]From County Clerk, Maui County
[7]From Special Investigation

Admitted.

Filed Sept. 15, 1947 at 11:32 a.m.

D. M. TALLANT,
Deputy Clerk of said Court.

Plaintiff's Exhibit No. 25—(Continued)
Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et. al., and DIEGO BARBOSA, et. al.

MOVANTS' EXHIBIT 6

Table II

Caucasians (Including Part-Hawaiians) and Non-Caucasians in the Population and the Grand Jury Panel of Maui

In the Population, 1947	Caucasians and Part-Hawaiians No.	%	Non-Caucasian No.	%
Male and Female Total	14,904	26.6	41,076	73.4
[1]Male, 21-60 yrs., citizens with 4 yrs. or more school yrs. completed	3,672	26.2	10,350	73.8
In the Panel:				
1947 Panel	38	76.0	12	24.0
1946 Panel	39	76.0	11	22.0
1945 Panel	42	84.0	8	16.0
1944 Panel	37	74.0	13	26.0
1943 Panel	41	82.0	9	18.0
1942 Panel	40	80.0	10	20.0

[1]To note [5] of Table I, a total of 1,500 part-Hawaiians (most of whom are part-Caucasians), (see p. 28, Census, op. cit.) is added on 2,513 and subtracted from 12,533. For sources and calculation method, see footnotes of Table I.

Admitted.

Filed Sept. 15, 1947 at 1:54 p.m.
D. M. TALLANT,
Deputy Clerk of said Court.

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al,

MOVANTS' EXHIBIT 7

Table 3

DISTRIBUTION OF EMPLOYED WORKERS BY MAJOR OCCUPATION GROUP[1] IN THE POPULATION AND IN THE PANEL

Classes		Male & Female	%	Male	%	After Deductions for Male Non-Laborers from Classes, 4-12%		Panel Members in 1947	
								No.	%
1	Professional and semi-prof. workers	1217	5.56	556	3.15	.....	3.15	2	4
2	Farmers & farm managers	570	2.61	468	2.65	.....	2.65	1	2
3	Proprietors, managers & officials, exc. farm	852	3.89	681	3.86	.....	3.86	33	66
4	Clerical, sales & kindred workers	1,617	7.40	1,122	6.35	.....	6.35	5	10
5	Craftsmen, foremen & kindred workers	1,670	7.63	1,619	9.17	1,368	7.74	1	2
6	Operatives & kindred workers	2,330	10.66	1,828	10.35	1,746	9.89	2	4
7	Domestic service workers	944	4.32	248	1.40	248	1.40	....	....
8	Service workers, except domestic	983	4.50	574	3.25	487	2.75	1	2
9	Farm laborers & farm foremen	9,305	42.57	8,638	48.92	8,195	46.41	1	2
10	Farm laborers (unpaid family workers)	346	1.58	116	.66	116	.66	....	....
11	Laborers, except farm & mine	1,936	8.85	1,747	9.89	1,747	9.89	1	2
12	Occupation not reported	95	.43	60	.34	60	.34	3	6
	TOTAL	21,865	100.00	17,657	100.00	13,967	.....	50	100

Foot notes to Table 3

[1]Population data for first two columns taken directly from "Population, 2nd Series, Characteristics of Population, Hawaii, 1940" p. 30, except for the combining of professional and semi-professional classes.

[2]Classes 1-4, all non-laborers, and classes 10, 11, 12, and 7, all laborers.

Class 5: Deduct 155 foremen and 96 own-account craftsmen. Former figure obtained by applying Territory minus Honolulu ratio, p. 17 and 18, ibid. 9.16% × 1619 equals 155; while latter obtained from Table 4, note [4] (with deduction of 2 tailoress).

Class 6: Deduct 82 for own-account operatives.

Class 8: Deduct 76 policemen and 11 firemen.

Class 9: Deduct 443 farm foremen. Estimated by taking the ratio of foremen to worker (20 to 1) of "Pioneer Mill Co. Annual Report," and dividing 21 into 9305. This is checked by an alternative estimate; using the number of foremen outside of Honolulu as a ratio of the number in this category for the same area as given in Census, p. 18, and multiplying by the total in the above: 5% × 8638 equals 432 foremen.

From these the number of those meeting the citizenship and educational qualifications are the following:

In general, Class 1-4 together with foremen and own-account workers in the other categories have about 3,748 qualifying while Class 5-12 have about 9,070 qualifying. See Note [13] under Table 4.

[3]Occupation status from "Directory of City and County of Honolulu and the Territory of Hawaii," Polk-Husted Directory Co., 1940-41. A few in the directory were determined on the basis of special investigation.

Admitted.

Filed Sept. 15, 1947 at 2:04 P.M.

D. M. TALLANT,
Deputy Clerk of said Court.

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al,

MOVANTS' EXHIBIT 8

Table 4

CLASS OF WORKER OF EMPLOYED PERSONS
(EXXCEPT OF PUBLIC EMERGENCY WORK). [1]MAUI COUNTY

	Male & Female	%
Total Employed:	21,865	100.0
[5]Wage & salary workers	19,550	89.4
[4]Employers & own-account workers	1,874	8.6
[3]Unpaid family workers	346	1.6
[2]Class of worker not reported	95	.4

	Male & Female	%	[12] Male	%	[13] Qualified Male	%
[6]Wage & Salary Workers	19,550	100.0	16,354	100.0	12,073	100.0
[7]Professional & semi-prof. workers employed	1,080	5.5	556	3.4		
[8]Managerial-supervisory employees	540	2.8	540	3.3		
					2,387	19.8
[9]Government officials	169	.9	169	1.0		
[10]Clerical, sales & kindred workers	1,617	8.3	1,122	6.9		
[11]Laborers	16,144	82.5	13,967	85.4	9,686	80.2

This classification is taken from the "U. S. Census Bureau, Population, Second Series, Characteristics of the Population, Hawaii, 1940," p. 3 and p. 16. For definitions, see esp. p. 3 and U. S. Census Bureau, "Population, Comparative Occupation Statistics for the U. S., 1870-1940."

[2]From Occupational Table, Census, ibid, p. 30.

[3]Same source as [2].

[4]680 Unincorporated proprietors. Retail, wholesale, service, amusements, hotel. See "Census of Business, Hawaii, Alaska, & Puerto Rico," 1939, p. 19.

547 From "Second Series, Pop.," p. 30, minus the number of farm managers, 23; see for the number of farm managers, "Census of Agric., Hawaii, 1940."

137 Own Acc't. professionals (dentists, lawyers, doctors, designers, surveyors, opticians, interior decorators, kindergarten, masseurs, midwives, nurses, photographers, mortuary, etc.). See Statehood Hearings, 79th Congress. 2nd Session, 1946, H.R. 236, p. 674, p. 674 et al. (No. of persons engaged in various businesses in Maui.)

510 Own-acc't. craftsmen (Bakers, blacksmiths, carpenters, mechanics, plumbers, shoe repair, painters, tinsmiths, tailoring, etc.) and others (Barber shops, baths, beauticians, taxi drivers, dressmakers, peddlers.) Statehood Hearings, op. cit.

Plaintiff's Exhibit No. 25—(Continued)

[5]Residual: Add [2], [3] and [4] and subtract from total: 21,865 minus 2,315 equals 19,550.
Accuracy of the result checked by using the ratio of the number of wage and salary workers to the total employed in the area outside of Honolulu.
From the Census, 2nd Series, p. 16, this ratio equals 88.8% (99,145 divided by 111,593) equals 88.8% times 21,865 (total employed in Maui) gives 19,416 which is a difference of only 34, compared with the calculated total.

[6]According to the Census, op. cit., p. 3: "This class consists of persons who worked as employees for wages or salary (in cash or kind). It includes not only factory operatives, laborers, clerks, etc., who worked for wages, but also persons working for tips or for room and board, salesmen and other employees working for commissions, and salaried business managers, corporation executives, and government officials."

[7]As defined by the Census. Total prof. and semi-prof. workers according to Census, op. cit., 1217, deduct 137 own-account prof. and semi-prof. (See Note [4].)

[8]Includes also salaried business managers, executives, foremen, superintendents, supervisors, department heads: 540. Total taken from the tabulation of Polk-Husted Directory Co.'s Directory of City & County of Honolulu and the Territory of Hawaii, 1939-1940, Section on Maui County.

[9]Includes also postmasters, inspectors, policemen. 76 policemen, Annual Report, Police Dept. Maui, 1940, p. 7, and by tabulation of Polk-Husted Directory as in [8], 93 for the others.

[10]Includes bookkeepers, clerks, typists, stenographers, secretaries, timekeepers, cashiers, insurance solicitors and other commissioned employes. From Census, p. 30, "clerical, sales and kindred workers."

[11]As a residual: 19,550—([7] to [10] equals 3,406) equals 16,144. This total checks closely with the number of women laborers indicated in the Census, p. 30, (about 2,463). Latter plus 13,967 male laborers in Table 3 in the fifth column gives a total of 16,430.

[12]For prof. and semi-prof., see p. 30, Table 20.
For managerial-supervisory, all assumed to be males.
For government officials, all.
For clerical, sales and kindred workers, see p. 30, Table 20.
For laborers, see previous note.

[13]From Table 1, 12,821 citizens and 14,022 with four years of schooling.
If all non-laborers are assumed to be citizens and with adequate school, we get 2,387 for non-laborers.
For the own-account workers, all except own-account craftsmen and service workers are assumed to be citizens and with sufficient education. (1874—510 equals 1364, note [4] above.) Thus 12,821—(1364 plus 2387) gives 9070 qualified laborers.
From p. 16, Census, the proportion of Filipino and Japanese male entreps. are determined by taking Territory-minus-Honolulu rations: 7.7% for the former and 47.7% for the latter of the total Maui entrep. If half of the Japanese entreps. are assumed to be non-citizen (see Census of Business, op. cit.), then, we have 31.5% of entreps. who are male and non-citizen. 31.5% times 1,874 equals 590.
From p. 16, Territory-minus-Honolulu ratio determined for female entreps.
28.6 times 1,874 equals 536.
536 plus 590 equals 1,126.
1,874 minus 1,126 equals 748.
12,821 minus (2,387 plus 748) equals 9,686.

Filed Sept. 15, 1947, at 2:25 P.M.
D. M. TALLANT,
Deputy Clerk of said Court.

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA,et al,

Table 5

CLASS OF WORKER OF EMPLOYED PERSONS, MAUI COUNTY

	In the Population						In the Panel—Percent [6]						
	Male & Female	%	Male	%	Qualified	%	1947	1946	1945	1944	1943	1942	Average
[1]Managerial-supervisory ...	709	3.2	709	4.0	709	5.6	66	56	66	62	62	54	61
[2]Entrepreneurs	1,874	8.6	1,338	7.6	748	5.9	12	10	4	10	10	14	10
[3]Clerical, sales	1,617	7.4	1,122	6.4	1,122	8.8	4	16	12	12	6	12	10.3
[4]Laborers	16,490	75.4	14,083	79.8	9,686	76.5	10	6	10	14	14	16	11.7
[5]All others	1,175	5.4	404	2.2	404	3.2	8	12	8	2	8	4	7
TOTAL	21,865	100.0	17,657	100.0	12,669	100.0	100	100	100	100	100	100	100
[7]Managerial-Entrepreneurial-Clerical	4,200	20.3	3,169	18.4	2,579	21.0	89.1	93.2	89.1	85.7	84.8	83.3	87.5
[3]Laborers	16,490	79.7	14,083	81.6	9,686	79.0	10.9	6.8	10.9	14.3	15.2	16.7	12.5
TOTAL	20,690	100.0	17,252	100.0	12,265	100.0	100	100	100	100	100	100	100

[1]From Table 4, adding item in [8] and [9]. All are assumed to be male and qualified from the point of view of citizenship and education. See notes under Table 4.

[2]Frrom Table 4, item[4]. 536 females deducted, see note [13], Table 4. 590 non-citizens deducted, see note [13].

[3]From Table 4, note [10].

[4]16,144 plus 346 family help, see Table 4.
13,967 from Table 4 plus 116 male family help, Census, p. 30.
9,686 from Table 4.

[5]All others include class of worker not reported and miscellaneous professional and semi-professionals. See Table 4. Calculated as a residual.

[6]See Table 4 for source. Each percentage divided by 2 gives the actual number of panel members in each category.
"Managerial-supervisory" includes besides managers, superintendents, supervisors, overseers, department heads, also head of clerical workers, foremen, luna, government officials.
"Laborers" include cowboy.
All others include band member, teacher, forester, unreported occupation, and those labeled just "employed."

[7] and [8] Combination of the first three classes.
Actual number for the panel: Managerial—41, 41, 41, 42, 39, 40
Laborers — 5, 3, 5, 7, 7, 8

Admitted.

Filed Sept. 15, 1947, at 2:35 p.m.
D. M. TALLANT,
Deputy Clerk of said Court.

CIRCUIT COURT, SECOND CIRCUIT
TERRITORY OF HAWAII
Criminal No. 2412 - 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al

MOVANTS' EXHIBIT 13

1946

REGISTER OF MALE VOTERS OF COUNTY OF MAUI,
3RD REPRESENTATIVE DISTRICT, 2ND PRECINCT—HONOLUA.
(Non-ILWU Members)

No.	Name	Legal Address	Occupation
1.	Ah Sing, Louis	Honokohua	Farmer
2.	Ah Sing, Philip	Honokohua	Farmer
3.	Burns, Alfred S.	Mahinahina	Ass't. Field Superintendent
4.	Cockett, Albert J.	Kahana	Retired K.R.R. Co. Mechanic
5.	Fleming, David A.	Mahinahina	Superintendent—B.P.
6.	Fleming, D. T.	Honolua	Manager—Baldwin Packers
7.	Haili, Joseph	Honolua	Ex-employee—B.P.
8.	Himori, Tadao	Honolua	Store Clerk
9.	Iaela, Kaaukea	Honokohua	Tractor Driver

Plaintiff's Exhibit No. 25—(Continued)

10. Kanamu, Keahi	Honokohua	Pensioner
11. Kapaku, John Kalia	Honokohua	Auto Mechanic—B.P.
12. Keahi, Haili	Honokohua	County employee
13. Kinner, Clyde Arthur	Mahinahina	Pvt. Contractor
14. Kukahiko, John	Honolua	Supervisor—B. Packers
15. Kurose, Hideo	Honolua	Supervisor—B. Packers
16. Lasponia, Pedro	Mahinahina	Supervisor—P.M. Co.
17. Makaena, William R.	Honolua	Supervisor—B. Packers
18. Matsushima, Haruo	Honolua	Clerk—Honolua Store
19. Matsushima, Shuichi	Honolua	Superintendent—Spraying
20. Medeiros, Thomas	Napili	Retired County employee
21. Ogawa, Mitsugi	Honolua	Store Clerk
22. Okimoto, Shoichi	Honolua	Supervisor—B. Packers
23. Osakoda, Thomas T.	Honokohua	Instructor—D.P.I.
24. Pali, Edmund	Honolua	County employee
25. Pali, Solomon Kaia	Honolua	County employee
26. Reimann, Jr., August	Napili	Superintendent—B. P.
27. Russell, George Dobson	Honokohua	Field Superintendent
28. Scott, Adam	Honokohua	Ass't. Field Superintendent
29. Seki, Shuji	Honolua	Personnel Director—B.P.
30. Shimomura, Yoshimatsu	Honolua	Supervisor—B. Packers
31. Tomlinson, Robert N.	Kahana	Standard Oil Co. (Lahaina)

Filed: Sept. 18, 1947, at 11:30 A.M.

/s/ D. M. TALLANT,
Deputy Clerk of Said Court.

Plaintiff's Exhibit No. 25—(Continued)

Circuit Court, Second Circuit
Territory of Hawaii

Criminal Nos. 2412 - 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al

MOVANTS EXHIBIT 14

1946

REGISTER OF MALE VOTERS OF COUNTY OF MAUI,
3RD REPRESENTATIVE DISTRICT, 2ND PRECINCT—HONOLAU
(ILWU Members)

No.	Name	Legal Address	Occupation
1.	Abe, Yoshio	Honolua	B. Packers employee
2.	Aoyama, Shigeru	Honokohua	B. Packers employee
3.	Asato, Shoko	Mahinahina	P. M. Co. employee
4.	Boteilho, Joseph	Honokohua	B. Packers employee
5.	Fujiwara, Hiroto	Honokohua	B. Packers employee
6.	Furukawa, Nobuo	Honolua	B. Packers employee
7.	Hapakuka, John	Honokohua	B. Packers employee
8.	Harada, Toshio	Honolua	B. Packers employee
9.	Harada, Yuichi	Honolua	B. Packers employee

Plaintiff's Exhibit No. 25—(Continued)

10.	Hayashi, Kiyoshi	Honolua	B. Packers employee
11.	Higashi, Joichi	Honokohua	B. Packers employee
12.	Hiraiwa, Masaaki	Honokohua	B. Packers employee
13.	Hirashima, Masatoshi	Honolua	B. Packers employee
14.	Hirokane, Katsumi	Honokohua	B. Packers employee
15.	Ito, Sunao	Honolua	B. Packers employee
16.	Ito, Yoshiharu	Honolua	B. Packers employee
17.	Kaaihue, George	Honolua	B. Packers employee
18.	Kaaihue, John L.	Honokohua	B. Packers employee
19.	Kaaihue, Thomas	Honolua	B. Packers employee
20.	Kahalia, Sam H.	Honolua	B. Packers employee
21.	Kalama, Stephen	Honokohua	B. Packers employee
22.	Kamaka, Lawrence	Honolua	B. Packers employee
23.	Kashima, Fred	Honolua	B. Packers employee
24.	Keahi, Charles	Honokohua	B. Packers employee
25.	Keahi, Joe	Honolua	B. Packers employee
26.	Keanu, William D.	Honokohua	B. Packers employee
27.	Kekona, Thomas	Honolua	B. Packers employee
28.	Kikuta, Kunio	Honokohua	B. Packers employee
29.	Kishaba, Chosei	Mahinahina	P. M. Co. employee
30.	Koa, Jr., David	Honolua	B. Packers employee
31.	Kusuda, Walter M.	Honolua	B. Packers employee
32.	Lum, Jacob Solomon	Honolua	B. Packers employee
33.	Mahuna, Solomon	Honolua	B. Packers employee
34.	Marciel, Francis	Honolua	B. Packers employee
35.	Mathias, Manuel F	Honokohua	B. Packers employee
36.	Michimoto, Isami	Honolua	B. Packers employee
37.	Michimoto, Tadashi	Honokohua	B. Packers employee
38.	Michimoto, Yoshio	Honolua	B. Packers employee
39.	Morinaga, Paul	Honolua	B. Packers employee

40. Naganuma, Edward Linzo	Honokohua	B. Packers employee
41. Naganuma, George Yoichi	Honokohua	B. Packers employee
42. Nagao, Kumataro	Honolua	B. Packers employee
43. Nagata, Minoru	Honokohua	B. Packers employee
44. Nahina, George	Honolua	B. Packers employee
45. Nakagawa, Mike M.	Honolua	B. Packers employee
46. Nakamura, Shigeyoshi	Honolua	B. Packers employee
47. Nishimura, Isamu	Honolua	B. Packers employee
48. Nohara, Yoshi	Honokohua	B. Packers employee
49. Nohara, Yutaka	Honokohua	B. Packers employee
50. Oda, Liichi	Honolua	B. Packers employee
51. Okano, Kunichi	Honolua	B. Packers employee
52. Okubo, Hajime	Honolua	B. Packers employee
53. Pali, Harry	Honolua	B. Packers employee
54. Reimann, George A.	Napili	B. Packers employee
55. Shigaki, George	Honolua	B. Packers employee
56. Shigaki, Takashi	Honokohua	B. Packers employee
57. Shimomura, Shigeru	Honolua	B. Packers employee
58. Shimomura, Yusaku	Honokohua	B. Packers employee
59. Tada, Takeshi	Honolua	B. Packers employee
60. Takahashi, Hideo	Honokohua	B. Packers employee
61. Tonouchi, Isamu	Mahinahina	P. M. Co. employee
62. Uchiyama, Tadao	Honolua	B. Packers employee
63. Watanabe, Toshiyuki	Honokohua	B. Packers employee
64. Yamaguchi, Yoshinobu	Honokohua	B. Packers employee
65. Yanagi, George	Honolua	B. Packers employee

Filed Sept. 18, 1947 at 11:31 A.M.
/s/ D. M. TALLANT,
Deputy Clerk of Said Court.

Plaintiff's Exhibit No. 25—(Continued)

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412-2413

TERRITORY OF HAWAII,

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al

MOVANTS' EXHIBIT 15

Length of Service of Members of Grand Jury Panel

1942-1947, Maui County

No. of those who were selected on the grand jury for:

5 Consecutive Years	2
4 Consecutive Years	6
3 Consecutive Years	15
2 Consecutive Years	31
TOTAL	54

No. of those who were selected on the grand jury for:

4 Non-consecutive Years	2
3 Non-consecutive Years	1
2 Non-consecutive Years	6
Total No. of Different Individuals Selected for the Grand Jury Panel, 1942-1947	203

Of a total of 300 man-years served by Maui grand jury panel members over the 1942-1947 period, 141 years were served consecutively by 54 individuals, i.e. 47% of the total man-years were served consecutively.

Filed Sept. 16, 1947 at 3:16 P.M.
/s/ D. M. TALLANT,
Deputy Clerk of Said Court.

Circuit Court, Second Circuit, Territory of Hawaii
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et *al*,

MOVANTS' EXHIBIT 17

LIST OF REGISTERED VOTERS FOR THE GENERAL ELECTION, NOVEMBER 5TH, 1946, THIRD REPRESENTATIVE DISTRICT BY NATIONALITIES

MALE Precincts	American	Chinese	English	Filipino	Hawaiian	Part-Hawaiian	Japanese	Korean	Porto Rican	Portuguese	All Others	TOTALS
1st. Lanai City	23	14	0	18	39	27	190	3	4	11	7	336
2nd. Honolua	4	1	0	1	23	8	54	0	0	3	3	97
3rd. Mala - Lahaina	14	3	1	6	40	32	267	0	4	28	11	406
4th. Kam III - Lahaina	19	7	1	4	49	13	139	0	0	21	4	257
5th. Olowalu	1	0	0	0	8	1	4	0	0	1	0	15
6th. Wailuku Elementary School	30	6	2	4	46	27	127	1	4	44	22	313
7th. Iao Elementary School	49	42	5	4	32	42	151	0	1	73	40	439
8th. Piihana - Wailuku	4	16	1	1	57	41	196	0	11	65	16	408
9th. Papohaku - Wailuku	8	9	0	4	33	29	106	2	4	34	6	235
10th. Wahee	2	5	0	1	52	20	43	0	3	28	2	156
11th. Kahakuloa	0	0	0	0	11	1	0	0	1	0	0	13

12th.	Kahului	23	11	1	3	42	19	196	0	0	33	10	338
13th.	Puunene	35	5	0	13	26	25	323	1	17	142	23	610
14th.	Spreckelsville	19	0	1	1	9	3	143	0	3	50	6	235
15th.	Lower Paia	23	15	0	3	19	10	120	1	11	78	6	286
16th.	Upper Paia	39	6	3	7	35	20	200	0	27	143	30	510
17th.	Keahua	2	0	0	1	10	7	92	1	1	35	6	155
18th.	Makawao	23	10	0	0	28	13	88	0	15	123	15	315
19th.	Haiku	10	10	0	12	28	18	90	0	3	49	16	236
20th.	Huelo	2	0	0	2	20	7	3	0	1	4	2	41
21st.	Keanae	1	4	0	1	43	10	1	0	1	2	1	64
22nd.	Nakiku	0	0	0	0	3	1	0	0	0	4	0	8
23rd.	Hana	12	5	0	3	73	11	26	1	1	14	4	150
24th.	Kipahulu	1	1	0	1	13	2	0	0	0	0	0	18
25th.	Kaupo	0	2	0	0	18	3	1	0	0	0	1	25
26th.	Honuaula	3	0	0	0	22	5	17	0	0	1	0	48
27th.	Keokea	19	33	0	4	32	20	100	0	1	73	9	291
28th.	Kihei	2	3	0	1	17	3	15	0	1	5	1	48
29th.	Halawa	1	0	0	0	13	1	0	0	0	0	0	15
30th.	Pukoo	13	3	0	1	52	35	4	0	0	2	1	111
31st.	Kaunakakai	21	12	0	3	54	33	79	0	0	9	4	215
32nd.	Hoolehua	7	4	0	0	83	15	3	0	0	3	2	117
33rd.	Maunaloa	7	3	0	4	7	2	33	0	0	3	2	61
34th.	Kalaupapa	10	7	1	0	72	26	15	0	0	18	7	156
	Totals	427	237	16	103	1109	530	2826	10	114	1099	257	6728

Filed September 16, 1947, at 2:28 P.M.
For identification.

D. M. TALLANT,
Deputy Clerk of said Court.

Mrs. Bouslog: This is a complete set of the exhibits. These are the original papers.

Judge Biggs: The court receives these documents with the express understanding that copies will be substituted [276] therefor promptly and the originals will be returned to the custody of the Clerk who produced these here.

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: Is that satisfactory, sir?

Mr. Crockett: Yes, that is satisfactory.

Mrs. Bouslog: Now, your Honors, I have so advised Mr. Crockett I would like to call him as a witness.

Judge Biggs: Call counsel as a witness?

Mrs. Bouslog: Unfortunately he is the prosecutor of Maui County and he has an official capacity as well as a capacity as a defendant. He is a defendant and he has consented.

Judge Biggs: He is a defendant, is he?

Mrs. Bouslog: Yes.

Judge Biggs: And he has consented?

Mrs. Bouslog: Have you consented?

Mr. Crockett: I have no objection.

Judge Biggs: Judge Harris and myself are informed by Judge Metzger that this is the practice in this Court and in the Courts of the Territory. Therefore, although the procedure would be very unusual, and I doubt if it would be permitted in our state or federal court, we will bow to the local custom. Mr. Crockett, should the Court warn you respecting your constitutional rights?

Mr. Crockett: I don't think I have any any more, if the Court please. [277]

Judge Biggs: Swear Mr. Crockett.

WENDELL F. CROCKETT

called as a witness by the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. State your name, please.

A. Wendell F. Crockett.

Q. What is your occupation?

A. Attorney at law and deputy county attorney of the County of Maui.

Q. How long have you been deputy county attorney for the County of Maui?

A. Since July 1, 1919.

Q. In your capacity as deputy county attorney for the County of Maui, have you presented most of the criminal cases to the grand jury and to the courts in the County of Maui?

A. Generally speaking I do.

Q. If an order of this Court is not made and entered restraining and enjoining further proceedings in connection with the criminal proceedings against Barbosa, what do you, as deputy county attorney intend to do in regard to the criminal complaints?

(Testimony of Wendell F. Crockett.)

A. Carry out the duties as prescribed by law.

Q. Is it not a fact that unless restrained, you will proceed to bring the criminal charges set forth in the complaints [278] before the grand jury in Maui County seeking an indictment in connection with the charges set forth in the complaint?

A. Not intending to argue the matter, it is the practice of the prosecuting officer to present the witnesses to the grand jury and to assist the grand jury in the examination of the witnesses. We do not present specific charges.

Mrs. Bouslog: I don't believe, your Honor—I ask the answer be stricken on the ground it is not responsive to the question.

Judge Biggs: We doubt frankly whether the testimony is pertinent. Read the question, please.

(The question was read by the reporter.)

Judge Biggs: I think the question as phrased is objectionable, Mrs. Bouslog. We order it stricken. I think what you actually want to ask is this: Is it not your intention, Mr. Crockett, to present the evidence respecting these particular plaintiffs to the grand jury to the end that they may return an indictment?

Mrs. Bouslog: Relative to these charges.

Judge Biggs: I beg your pardon?

Mrs. Bouslog: Relative to the charges.

The Witness: That is in substance correct, if the Court please.

(Testimony of Wendell F. Crockett.)

Q. (By Judge Biggs): That is in substance correct? A. Yes. [279]

Q. (By Mrs. Bouslog): Now unless you are restrained by this Court, what do you as deputy county attorney intend to do with respect to the indictments pending in Proceedings No. 2365, Territory of Hawaii vs. Kahlokula?

Miss Lewis: I object to that question. It has been stipulated that if there is no injuction those persons will be arraigned. I don't see what else is required.

Judge Biggs: What more do you want than that, Mrs. Bouslog?

Mrs. Bouslog: There is nothing about the trial, your Honor.

Judge Biggs: Well, they would be arraigned and that is part of the orderly procedure before going to trial. Do you want the record to show here that it is actually the intention after arraignment to proceed with the prosecutions?

Mrs. Bouslog: That's right. If the Court doesn't believe it is necessary——

Judge Biggs: The Court is not here to take a position as to what is or may not be necessary. That rests with counsel.

Mrs. Bouslog: Yes, your Honor, in our petition we allege that unless restrained then Mr. Crockett as a defendant will proceed with the arraignment and trial of these cases.

Judge Biggs: I think we are wasting time about

(Testimony of Wendell F. Crockett.)

a very small matter. Mr. Crockett, is it your intention after [280] arraignment to proceed with the prosecution of these cases?

Miss Lewis: If the Court please, could I say one word?

Judge Biggs: Yes, you may object to the Court's question if you wish.

Miss Lewis: We are not trying to be technical, but a judge of the court is a defendant here and we represent him too. Apparently counsel doesn't understand that the judge will hear their pleas, and how can we say whether Mr. Crockett is going to try the cases or not? I consider it most improper.

Judge Biggs: Well, there is that point, of course.

Mrs. Bouslog: Your Honor, in this question we have, "What do you intend to do? Do you intend to proceed as deputy county attorney?" We are not directing it to the Court at all, but merely what Mr. Crockett as a defendant intends to do. Nor do we ask him in any effect what the judge will do, but it is merely what he as deputy county attorney for the County of Maui will do?

Judge Biggs: The Court will withdraw its own question. The Court thinks it should state as a matter of record to end this particular phase of this controversy that we are of the opinion that the stipulation to the effect that the plaintiffs would be arraigned is sufficient as the first step in the orderly procedure of the prosecution.

(Testimony of Wendell F. Crockett.)

Q. (By Mrs. Bouslog): All right, Mr. Crockett, in your experience [281] and to your own personal knowledge as deputy county attorney for the County of Maui, has there ever been a Filipino on the grand jury up to and including 1947?

A. I do not believe there have been any Filipinos on the grand jury.

Q. To your own knowledge and personal experience, has there ever been a person employed as a field hand on the plantations, the sugar or pineapple plantations on the grand jury?

A. I couldn't answer that question because I have never taken much note of their occupation unless I knew them personally.

Q. In your experience of 30 years as deputy county attorney for the County of Maui, have you ever prosecuted any person for unlawful assembly and riot except as it grew out of a labor dispute?

Miss Lewis: I object to the question, your Honor. We would have to have a whole foundation laid in every incident in order to make any comparison whatsoever.

Judge Biggs: The Court thinks that is a pertinent question in the light of the background of this case. Objection overruled.

Q. (By Mrs. Bouslog): Will you read the question, please?

(The question was read by the reporter.)

A. To my recollection except for the present cases, there was only one case prosecuted in the

(Testimony of Wendell F. Crockett.)

County of Maui for unlawful [282] assembly, and that grew out of an alleged kidnapping that took place during a labor dispute.

Mrs. Bouslog: That's all, Mr. Crockett.

Judge Biggs: Cross-examine, Miss Lewis, or perhaps you desire to cross-examine yourself. Do you want to make a statement, or would Miss Lewis prefer to cross-examine. The situation is a little bit beyond my experience.

Miss Lewis: I think it is beyond mine too. The subject of direct covered more than I had understood that it was going to perhaps.

Judge Biggs: Perhaps Mr. Crockett would like to add something.

Mr. Crockett: I would like to make a statement.

Cross Examination

Mr. Crockett: In regard to the question which I was asked concerning Filipinos serving on the grand jury, I am very well acquainted with what I would call most of the Filipinos in Maui, that would come in the class that might be considered eligible for serving on juries, and they have not been persons who are citizens, and it is only within the past three or four years that several of the persons who in my mind and my own personal opinion would be considered as qualified jurors, both grand or trial jurors, have been naturalized. This year in 1948 the grand jury panel list shows one Filipino, a Mr. Gamponia, who is manager of a very large business concern [283] there and who has become naturalized

(Testimony of Wendell F. Crockett.)

as a citizen and was selected and did serve on the grand jury panel.

Q. (By Judge Biggs). Of what year?

A. 1948. But up to that time the Filipinos who had been naturalized and who were citizens were generally veterans of World War I, and during the past four years there have been a few Filipinos who were born in the islands and have recently reached voting age and have just begun to appear on the voting list. That is all I have to say.

Redirect Examination

By Mrs. Bouslog:

Q. Mr. Crockett, do you think you know personally all the intelligent, eligible voting Filipinos in Maui County?

A. Practically I do.

Q. Now Mr. Gamponia, what large outfit is he the manager of?

A. The Oriental Benevolent Association. I am not sure whether it is an incorporated concern, but he built it up to have about $1,000,000 worth of assets.

Mrs. Bouslog: Thank you, Mr. Crockett.

Judge Biggs: Do you desire to make any further statement by way of redirect-examination?

Mr. Crockett: I think that is all.

Judge Biggs: Thank you very much.

(The witness was excused.)

Judge Biggs. Any further witnesses? [284]

Mrs. Boslog: Your Honor, perhaps this also is

out of the usual experience, but to tie in to the testimony given by Mr. Nicholas Sibolboro, I am the only person who can state to the Court or take the stand and state what the rest of that incident regarding those 93 people involves.

Judge Biggs: How can you tell it from your own knowledge?

Mrs. Bouslog: Because I was there, your Honor.

Judge Biggs: You were there. Well, I must say we are getting into unusual circumstances.

Mrs. Bouslog: This is the last testimony, your Honor.

Judge Biggs: Very well, we will take it. Swear Mrs. Bouslog, please.

HARRIET BOUSLOG

called as a witness by and in behalf of the Plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

Mrs. Bouslog: My name is Harriet Bouslog. My address is Honolulu, T. H. I am the attorney for the International Longshoremen's and Warehousemen's Union. In that capacity I act as and on a standby basis when there are periods of labor disputes, or periods of great stress. On July 13, 1947 a Sunday, at the hour of eleven o'clock, I received a telephone call advising me that a large group of people had been arrested at Wahiawa in connection with picketing activities. I [285] immediately went

(Testimony of Harriet Bouslog.)

to the police station in Honolulu and talked to Dan Liu, the assistant or acting chief of police at that time and asked him the nature of the charges against the 93 people who had been arrested. In my presence by telephone he attempted to get in touch with Captain Mookini who was in charge of the strike detail for the pineapple strike in the City and County of Honolulu. It took, I think, something like an hour and one-half to finally contact Captain Mookini. The telephone conversation took place in my presence, and after the conversation Mr. Liu told me that the 83 people——

Mr. Crockett: If the Court please, we object to what Mr. Liu told her.

Judge Biggs: I think you will have to omit statements as to conversations, although you may tell what you did or what you heard.

The Witness: I heard Mr. Liu talking to Mr. Mookini, Captain Mookini, and heard him say, "So they are being charged or held for unlawful assembly". I stayed at the police station from approximately eleven or twelve o'clock in the morning until three or four o'clock in the afternoon. Captain Liu, at my request, contacted Captain Mookini, or the police officers at the Wahiawa police station, or he put in calls in my presence, but the people were not finally brought to Honolulu until four or five o'clock in the afternoon. At the time they arrived I talked with the people and they still [286] did not know what they were charged with.

(Testimony of Harriet Bouslog.)

Miss Lewis: I move to strike this whole line of testimony as to what the prosecutor or the police in Honolulu have done or may do.

Judge Biggs: Strike that portion beyond "I talked with the persons".

The Witness: I talked with Mr. Sibolboro.

Judge Biggs: All you are doing is offering corroboration, is that correct?

The Witness: No, your Honor, the defendants never knew that the police had advised me that they were to be charged with unlawful assembly and riot for which they were held for practically a full day.

Judge Biggs: That is the substance of what you testified?

The Witness: That is correct.

Judge Biggs: Very well, cross-examine.

Cross Examination

By Miss Lewis:

Q. Mrs. Bouslog, are you testifying that this incident involving these 83 people was the same matter that involved Mr. Sibolboro?

A. No, Miss Lewis. There were eight people arrested in one group, as Mr. Sibolboro testified, and 85 in another group, but they were all held at the Wahiawa police station at the [287] same time and brought into Honolulu at the same time, so that the 93 people arrived together.

Q. As a matter of fact, those were two different incidents, were they not?

A. That is correct, but there were 83 people in

(Testimony of Harriet Bouslog.)

one group who were arrested at one time and Mr. Sibolboro and seven others, I believe, who were arrested at a different time at different places in the vicinity of Wahiawa.

Q. Have you examined the police records to see what those 83 people were charged with?

A. I haven't examined the police records. As their attorney I know that they were, I believe, charged with obstructing the highway.

Q. So that this bringing into your testimony of unlawful assembly is based entirely on your overhearing a discussion between two police officers as to what charge they should bring?

A. No, it is based upon or as the result of being told that. I remained at the police station all day or until they were brought into the station.

Q. Now, Mrs. Bouslog, is that incident involving the 83 persons the same one that is involved in a case called the Territory vs. Duz?

A. No, Miss Lewis, the case against the 83 people, I believe, was nolle prossed by the City and County Prosecutor. [288]

Q. As a matter of fact, isn't it a fact that that is the same happening at Turner's Switch that is now involved in a proceeding pending in Judge Moore's Court?

A. I believe that is the case of the people who were with Mr. Sibilboro, but not the 83; but I haven't seen the police records. I don't know what the police records show.

(Testimony of Harriet Bouslog.)

Q. It is your testimony that Territory vs. Duz involves the Sibolboro incident; is that your testimony?

A. I haven't been able to figure out yet what the contempt proceedings before Judge Moore do involve. I haven't talked to the witnesses, Miss Lewis. Mr. Symonds has handled that.

Q. Doesn't the information in that case specify it concerns a matter at Turner's Switch?

A. I can't say of my own knowledge.

Q. You really don't know what incident it concerns, is that it?

A. I know that the case where the 83 people were arrested is not the case that is before Judge Moore at the present time, but that is contempt under a restraining order limiting picketing.

Q. My question was directed to this: Were not the 83 people involved in an incident at Turner's Switch?

A. No, I believe they were just walking up and down the highway. I don't know whether it was Turner's Switch or where it was. [289]

Miss Lewis: If the Court please, I don't want to take time for further cross-examination. I would like to move to strike the testimony. To clear up these matters we would have to bring in all these different police records and other proceedings. I think we are going entirely too far afield, your Honor. To go into the City and County of Honolulu, which is under an entirely different—it is under

(Testimony of Harriet Bouslog.)

City and County administration. The prosecutor is appointed by the Mayor. True, the Attorney General has general supervision, but there has been no offer to show that the Attorney General personally directed these particular charges that Mrs. Bouslog was referring to.

Judge Biggs: What about the proposition, Mrs. Bouslog, that this, albeit a subordinate part of the Attorney General's office, was nonetheless not under his control in the sense that he directed the proceedings?

Mrs. Bouslog: I think that the labor policies of the Territory are directed from the Attorney General's office.

Miss Lewis: Well, if the Court please, Mrs. Bouslog says she thinks. I would like to have that answer stricken. That is purely a matter of opinion.

Judge Biggs: Yes, strike the answer. We will deny the motion to strike, and you, of course, may answer the testimony by appropriate evidence if you see fit. Any further questions? [290]

Miss Lewis: No, your Honor.

Judge Biggs: Thank you. Now, does that conclude your case?

Mrs. Bouslog: May I consult a moment please? Yes, that's all, your Honor.

(Witness excused.)

Judge Biggs: Does that conclude your case?

Mrs. Bouslog: I think there is one table that was referred to but not marked for an exhibit. It

was the haoles on the grand jury panel, 1942 to 1947.

Judge Biggs: I thought that had been admitted. Are you sure that it has not? Have you seen this, Mr. Crockett?

Mr. Crockett: Yes, except for one or two errors on it which we will not bother with, it is substantially correct.

Judge Biggs: Very well, let it be marked subject to the same ruling. Admitted and marked subject to the same ruling. Exhibit 26.

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 26 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 26

HAOLES ON GRAND JURY PANELS

1947	1946	1945	1944	1943	1942
Allen, R.	Baldwin, A.	Balthis, W. H.	Ashdown, C. W.	Ashdown, C. W.	Baldwin, H.
Baldwin, E.	Burns, Wm.	Benner, H. B.	Bates, W. A.	Bates, W. A.	Bates, W. A.
Baldwin, R.	Bush, F. G.	Bush, F. G.	Benner, H. B.	Bainbridge, M.	Coffin, Lee
Bowmer, E.	Bradley, R. R.	Collins, A. J.	Caldwell, H. B.	Bush, F. G.	Eitner, A. B.
Broadbent, F.	Benner, H. B.	?Dickson, Wm.	Bainbridge, M.	Butler, B. J.	Conradt, A. W.
Bruce, R.	Collins, A. J.	Chalmers, Jos.	Chatterton, C. E.	?Casey, T. A.	Elmore, E. S.
Burns, A.	Carmichael, J.	DuBois, C.	Bush, F. G.	Crabbe, E. C. S.	Fraser, D.
Elmore, E. S.	Dease, D.	English, H.	Dubois, C.	DuBois, C.	Gerner, E.
English, H.	?Dickson, Wm.	Gay, F. J. S.	Elmore, E. S.	Chatterton, C. E.	Hartman, S. J.
Ezell, A.	Gay, F. J. S.	Gill, R. E.	English, H.	Eitner, A. B.	Mair, Wm. A.
Fleming, J.	Hebert, L.	Gielow, L. A.	Gay, F. J. S.	Elmore, E. S.	Mant, R. F.
Fredholm, G.	Harris, T. C.	Hoxie, J. W.	Gielow, L. A.	English, H.	Patterson, John
Haygood, P.	Hoxie, J. W.	Rexford, K. J.	Giles, A. O.	Fraser, D.	Peterson, H.
Moodie, A.	Manke, E.	Sabin, E. F.	Hoxie, J. W.	Hoxie, J. W.	Plunkett, Ch.
Morris, C.	Marques, C. N.	Smith, A. E.	Nuenzig, Wm.	Hughes, R. H.	Prescott, W. F.
Percy, W.	Nedermeyer, J.	Sutherland, C.	McCorriston, O.	Prescott, W. F.	Rice, H. F.
Peterson, H.	Sabin, E. F.	Tuttle, Wm. P.	Rexford, K. J.	Patterson, John	Richardson, W.
Reinhart, P.	Schattauer, F. C.	Willett, C. J.	Singlehurst, J. M.	Rexford, K. J.	von Tempsky, R. G.
Simpson, A.	Scott, F.		Tuttle, Wm. P.	Richardson, Wayne	Rexford, K. J.
Trask, J.			Thompkin, G. W.	von Tempsky, R. G.	Burnett, C. H.
Waterhouse, A.			Willett, C. J.		
			Wold, R. L.		

Hubbard=Port.
Admitted.

Judge Biggs: You are ready to proceed, Miss Lewis?

Miss Lewis: If the Court please, at this time I would like to move to strike the matters where we have reserved the right to strike. I don't know how much argument the Court wants. I perhaps can make that general motion, or shall I enumerate?

Judge Biggs: I think you might as well make the [291] general motion, and I think we will reserve passing on the motion until the close of the case.

Miss Lewis: The matters where we have reserved a motion to strike?

Judge Biggs: Yes.

Miss Lewis: I also move to dismiss the actions on all the grounds stated in our written motion and on the ground that the proof has not substantially altered the case. I could argue that at length, but I think the Court would rather hear arguments at some other time.

Judge Biggs: Yes, I think it is preferable to hear arguments at some other time.

Mrs. Bouslog: Before the Defendants continue, there was one matter that I forgot to present to the Court and that is this: The Plaintiffs have and they offer to the Court, a film. The defendants also have a film which they are going to show to the Court. The film that we have and what we offer, it shows picketing at the Maui Agriculture Company at the exact place where the Kaholokula——

Judge Biggs: What about the time?

No. 12300 – No. 12301

United States
Court of Appeals
For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, and JEAN LANE, individually and as Chief of Police of the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County of Maui, and WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

No. 12301

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii,

Appellant,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

vs.

E. R. BEVINS, individually and as County Attorney for the County Maui, and WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

Transcript of Record

In Four Volumes

Volume IV Pages 1571 to 1998

FILED
OCT 14 1949
PAUL P. O'BRIEN,
CLERK

Appeals from the United States District Court for the Territory of Hawaii

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

No. 12300 — No. 12301

United States
Court of Appeals
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In Four Volumes

Volume IV Pages 1571 to 1992

Appeals from the United States District Court for the Territory of Hawaii

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

PROCEEDINGS CONTINUED

Mrs. Bouslog: It takes only about ten minutes to run the whole film. I believe there are some scenes from the first day of September running through the period September 17th, which is two days beyond the incident itself. It has the exact scene and some scenes taken the day of the incident.

Judge Biggs: Do you object to these being shown at the same time as your own?

Mr. Crockett: No, we have no objection, if the Court please, subject to the usual objections.

Judge Biggs: Is that all, Mrs. Bouslog?

Mrs. Bouslog: That's all.

Judge Biggs: Very well, the Court will take a five-minute recess.

(Recess.)

Mrs. Bouslog: Your Honor, I would like to offer this document in evidence. Mr. Crockett has examined it.

Judge Biggs: This is ILWU Research Department Hawaii Reginal Office document. Was there a number reserved for it?

Mr. Symonds: No, your Honor, it would be number 27.

Judge Biggs: Very well, let it be admitted subject to the same ruling; No. 27.

(Thereupon the document referred to was marked Plaintiffs' Exhibit No. 27 and received in evidence.)

Ancestry	Total—Family and Single Groups Men	Women	Children	Total	Houses
JAPANESE	1,423	1,280	3,324	6,027	
	1,133	1,124	.....	2,257	
	2,556	2,404	3,324	8,284	1,825
FILIPINO	106	80	1,153	1,339	
	1,966	326	140	2,432	
	2,072	406	1,293	3,771	1,006
CHINESE	37	32	76	145	
	38	12	.....	50	
	75	44	76	195	52
KOREAN	9	7	23	39	
	18	7	2	27	
	27	14	25	66	21
PUERTO RICAN	139	126	338	603	
	3	1	.....	4	
	142	127	338	607	105
PORTUGUESE	632	583	1,001	2,216	
	23	74	.....	97	
	655	657	1,001	2,313	503
HAWAIIAN	165	141	281	587	
	.....	.....	.....	.....	
	165	141	281	587	117
ANGLO-SAXON	181	179	132	492	
	2	2	.....	4	
	183	181	132	496	164
ALL OTHERS	51	33	275	359	
	6	10	.....	16	
	57	43	275	375	40
TOTAL OF MAUI	2,743	2,461	6,603	11,807	
	3,189	1,556	142	4,887	
	5,932	4,017	6,745	16,694	3,833

Admitted.

PLAINTIFFS EXHIBIT No. 27

ILWU Research Department Hawaii Regional Office
Census of Hawaiian Sugar Plantations
Total Employees and Families, Including Planters
Summary—Maui

H.S.P.A. Census
June 30, 1947
Page 3.

Ancestry		Family Group Men	Women	Children	Total	Houses	Single Group Men	Women	Children	Total	Houses	Total—Family and Single Groups Men	Women	Children	Total	Houses
JAPANESE	Cit.	715	785	3,203	4,703		708	495	121	1,324		1,423	1,280	3,324	6,027	
	Non-Cit.	915	911	.....	1,826		218	213	.....	431		1,133	1,124	.....	2,257	
	Total	1,630	1,696	3,203	6,529	1,470	926	708	121	1,755	355	2,556	2,404	3,324	8,284	1,825
FILIPINO	Cit.	22	57	1,104	1,183		84	23	49	156		106	80	1,153	1,339	
	Non-Cit.	391	320	139	850		1,575	6	1	1,582		1,966	326	140	2,432	
	Total	413	377	1,243	2,033	392	1,659	29	50	1,738	614	2,072	406	1,293	3,771	1,006
CHINESE	Cit.	16	28	73	117		21	4	3	28		37	32	76	145	
	Non-Cit.	13	11	.....	24		25	1	.....	26		38	12	.....	50	
	Total	29	39	73	141	32	46	5	3	54	20	75	44	76	195	52
KOREAN	Cit.	4	6	23	33		5	1	.....	6		9	7	23	39	
	Non-Cit.	7	7	2	16		11	.....	.....	11		18	7	2	27	
	Total	11	13	25	49	12	16	1	.....	17	9	27	14	25	66	21
PUERTO RICAN	Cit.	88	95	318	501		51	31	20	102		139	126	338	603	
	Non-Cit.	1	1	.....	2		2	.....	.....	2		3	1	.....	4	
	Total	89	96	318	503	82	53	31	20	104	23	142	127	338	607	105
PORTUGUESE	Cit.	447	452	925	1,824		185	131	76	392		632	583	1,001	2,216	
	Non-Cit.	16	27	.....	43		7	47	.....	54		23	74	.....	97	
	Total	463	479	925	1,867	402	192	178	76	446	101	655	657	1,001	2,313	503
HAWAIIAN	Cit.	107	113	261	481		58	28	20	106		165	141	281	587	
	Non-Cit.	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	
	Total	107	113	261	481	92	58	28	20	106	25	165	141	281	587	117
ANGLO-SAXON	Cit.	145	135	131	411		36	44	1	81		181	179	132	492	
	Non-Cit.	2	2	.....	4		.....	.....	.....	.....		2	2	.....	4	
	Total	147	137	131	415	138	36	44	1	81	26	183	181	132	496	164
ALL OTHERS	Cit.	32	25	272	329		19	8	3	30		51	33	275	359	
	Non-Cit.	6	7	.....	13		.....	3	.....	3		6	10	.....	16	
	Total	38	32	272	342	32	19	11	3	33	8	57	43	275	375	40
TOTAL OF MAUI	Cit.	1,576	1,696	6,310	9,582		1,167	765	293	2,225		2,743	2,461	6,603	11,807	
	Non-Cit.	1,351	1,286	141	2,778		1,838	270	1	2,169		3,189	1,556	142	4,887	
	Total	2,927	2,982	6,451	12,360	2,652	3,005	1,035	294	4,334	1,181	5,932	4,017	6,745	16,694	3,833

Admitted.

Mr. Crockett: We will call Mr. Cockett.

JOHN B. COCKETT

called as a witness by and in behalf of the Defendants, having been previously sworn, was examined and testified as follows: [293]

Direct Examination

By Mr. Crockett:

The witness, if the Court please, was on the stand this morning and has already been sworn. The record shows that he is Clerk of the Second Circuit Court of the Territory of Hawaii.

Judge Biggs: Very well.

Q. Mr. Cockett, did you, at the request of the defense, bring down the exhibits which were introduced in the proceedings had in the district court of Lanai entitled the Territory vs. Aglian?

A. Yes.

Q. Are these the exhibits?

A. These are the exhibits consisting of Exhibits A, B, C, D, E, F, and G.

Q. I see. Where have these exhibits been since they were transmitted to your court?

A. They have been in my custody at all times since the 8th day of August, 1947, at 1:18 p.m.

Mr. Crockett: If the Court please, at this time we ask that these exhibits be received in evidence.

Judge Biggs: Any objection?

Mrs. Bouslog: Your Honor, I have the same objections that have been reserved by the defendants up to now as to relevancy.

(Testimony of John B. Cockett.)

Judge Biggs: Very well, same ruling as made with [294] respect to the defendants: Defendants' Exhibits E-1 to E-5.

(Thereupon, the documents referred to were marked Defendants' Exhibits E-1 to E-5 inclusive and received in evidence.)

Q. Mr. Cockett, showing you these two envelopes marked Criminal 2412, Territory vs. Abraham Makekau, and also another envelope marked Criminal No. 2412, Territory vs. Abraham Makekau, do those envelopes contain the exhibits which were offered in the hearing before the Circuit Court upon the challenges of the grand jury; that is, offered in evidence by the prosecution?

A. Yes, they do.

Q. And I believe the exhibit numbers were A, B, C and D?

A. Yes, and the Court's Exhibits 1 and 2.

Mr. Crockett: I offer those in evidence.

Judge Biggs: Admitted subject to precisely the same ruling.

Mr. Crockett: These have been marked Plaintiffs' Exhibits 14 and 16 for identification.

Judge Biggs: Let them now be admitted subject to the usual ruling.

(Thereupon, the documents referred to were received in evidence as Plaintiffs' Exhibits Nos. 14 and 16.)

Q. Mr. Cockett, there was testimony adduced that certain persons listed as grand jurors whose

(Testimony of John B. Cockett.)

names had appeared for several consecutive years. As Clerk of the Court, do you know [295] how those names happened to appear consecutively?

A. Because they did not serve and the Court and the jury commissioners put them back on the list the following year. In those days our jury panel when drawn served the whole year, but the system has been changed so that the panel has been changed, that is, the working panel.

Q. In other words, during the years before there was a change, if a man did not serve on the jury panel his name remained on the list of 50?

A. That is correct.

Q. And when the jury commissioners met they only filled in to take places of those who had been called for actual service? A. That is correct.

Q. You mentioned there was a change. Do you recall why that change was made?

A. I believe on account of an amendment to the law.

Mr. Crockett: If the Court please, the laws of the Territory shows that there was a change made in the session laws of 1945. I only have the 1947 session here, but it was 1945, Chapter 163, Series D 165, and if I might inform the Court what that change was, it was this, that any persons whose names were listed on the list of 50 could not again appear the following year, so they had to make an entirely new list of 50. That is all; cross-examine.

Mrs. Bouslog: No questions.

(Witness was excused.) [296]

Mr. Crockett: If the Court please, if it would be of service to the Court, I have a map of Lanai City, to give the Court an idea of the town, if counsel has no objection.

Mrs. Bouslog: No objection.

Judge Biggs: That will be admitted as Defendants' Exhibit F.

(Thereupon, the document referred to was marked Defendants' Exhibit "F" and was received in evidence.)

JACOB KALUA NAHINU

called as a witness by and in behalf of the Defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name?

A. Jacob Kalua Nahinu.

Q. Where are you living, Nahinu?

A. 1244 Fort Street.

Q. In the month of July, 1947, were you at Lanai City? A. That's right.

Q. And were you employed there?

A. Yes, sir.

Q. For whom were you employed?

A. Hawaiian Pineapple Company.

Q. What was the capacity in which you were employed? A. Truck driver. [297]

(Testimony of Jacob Kalua Nahinu.)

Q. Where were you living at that time?

A. Block 33, house 7.

Q. House number what? A. Seven.

Q. Showing you a picture which I have shown to counsel, is that a picture of the house where you were living? A. Yes, it looks like it.

Mr. Crockett: I offer this in evidence.

Judge Biggs: Any objection?

Mrs. Bouslog: No, your Honor, except as to relevancy, if the Court please.

Judge Biggs: Admitted with the usual reservation.

Mr. Crockett: I have several, if the Court please. As they are identified they may be put together.

Judge Biggs: Very well.

Q. Is that also a picture of the same house or the area where you were living? A. Yes.

Q. Showing you two additional views of apparently the house, were those different views of the same house?

A. Yes, I believe they are the same.

Mr. Crockett: That makes four, if the Court please. We offer them all in evidence together.

Judge Biggs: Let them be marked as G-1, 2, 3, 4.

(Thereupon, the document referred to were marked Defendants' Exhibits Nos. G-1 to G-4 inclusive in evidence.) [298]

Q. What was the nature of your work there?

A. We were hauling pineapples.

Q. Were you the driver or swamper?

(Testimony of Jacob Kalua Nahinu.)

A. Truck driver.

Q. Now do you recall on the morning of July the 15th making a report to the police department about some trouble you had had that morning?

A. Yes, I do.

Q. What time did the trouble occur?

A. About 5:30 in the morning.

Q. What was the nature of the trouble?

A. Well, I don't know. Apparently the boys were sore at us for taking down fruit to the wharf.

Q. What happened? What was the trouble?

A. Well, there was no trouble. They just pounced on me; that's all, and beat me up.

Q. Now what time in the morning did you say this occurred?

A. About 5:30 in the morning.

Q. Will you tell us in your own words from the time you got up just what happened?

A. When I got up and got ready to go to work, my brother, of course, was up ahead of me and he went out to clean up. When he came in he told me there were boys surrounding the house, because we knew what those guys were going to do.

Mr. Symonds: I object to the testimony of the witness [299] on the ground it is hearsay and calling for a conclusion of the witness.

Judge Biggs: There is some hearsay in it, but it is really a part of the incident. Objection overruled.

Q. Proceed.

(Testimony of Jacob Kalua Nahinu.)

A. He warned me that there were men outside. Well, I didn't know they were out there to grab me and beat me up.

Mr. Symonds: I object to that, your Honor.

Judge Biggs: Can't the witness just tell us what took place, please?

Q. Yes, proceed. Tell us what took place. Did you go outside?

A. I went outside because I had to go outside. The wash house was in the back of our house. I went out there with towel and soap. I washed my face in the tub there, and I toweled myself. At that moment the door of the bathroom was shut. I thought the wind blew the door to shut it, and I tried to get out but somebody was leaning on the door. Then I knew that somebody out there was trying to corner me in the wash house. Then the only thing I could do was to give him a good stiff shove and the door did give. The moment that door gave something struck me right here on my forehead (indicating). I just saw the hand and something hard, but I couldn't see the person. Well, at that moment I was kind of stunned. Later I found out that it was a rock.

Mr. Symonds: Just a minute; I object, your Honor. [300]

Judge Biggs: Why do you object, Mr. Symonds?

Mr. Symonds: He says later on, he says it was a rock.

Judge Biggs: All right, it is a part of the res

(Testimony of Jacob Kalua Nahinu.)

gestae. Let's get his story. It is a difficult story to get from the witness because he will not speak up clearly. Speak up clearly. You were hit and you were stunned. Then what happened? Just tell us what happened, not what you thought, but what happened.

A. Well, I got out of the door. Then this lot of men came up to me and started beating me up. What could I do? I couldn't do anything.

Q. Did you fall down?

A. I didn't fall down, but I don't know what kept me up on my two feet.

Q. About how many men were there, one or more than one? A. More than one, about 20 men.

Q. About 20 men. And when you say they were beating you, did they strike you?

A. They struck me and all kinds. I have a big cut. I could show you the mark. I got a scar from one of the cuts. .

Q. How long did that continue?

A. Oh, I believe about ten minutes.

Q. Did you identify any of the men there?

A. I did. [301]

Q. Can you give us the names of any of the persons that you did identify?

A. Well, the Hawaiian fellow was Makekau. The Filipino boys I know them only by sight.

Q. Any other boys you identified by name at that time?

A. I don't remember any Japanese, but I know there was a lot of Filipino boys.

(Testimony of Jacob Kalua Nahinu.)

Q. Can you give us the names of the Filipino boys?

A. One fellow, they call him "Big Boy." I don't know his right name, because I was only with him for about a week, see.

Q. Any others that you recall?

A. If I see them I could recognize them and point them out.

Q. Now did anybody come to your help or assistance while this was going on?

A. My brother tried to help me, but somebody else was trying to take care of him too.

Q. By "somebody else" you mean the boys?

A. There were a big group of them. Some came for me and some went for him.

Q. Did that occur in the same place?

A. In the same place at about the same time.

Q. Was your brother living in the same house with you?

A. That's right, living in the same room.

Q. You mentioned the washroom. Showing you this picture, which we will later identify, is that the washroom you mean?

A. The door should be over here on this side. This is another [302] door. It isn't this one, the one on the inside.

Q. This is the same building, but it was a different door that you went into? A. Yes.

Mr. Crockett: We will offer this, if the Court please.

(Testimony of Jacob Kalua Nahinu.)

Judge Biggs: Any objection?

Mr. Symonds: No, your Honor.

Judge Biggs: Why not put the other picture in at the same time and mark them as one?

Mr. Crockett: Yes, we will, if the Court please.

Q. What is this last picture that I have? This is the other end of the washroom?

A. Yes, that is the one I came in.

Q. That is the door you came in, the one where you were penned in? A. That's right.

Mr. Crockett: We will offer these in evidence.

Judge Biggs: Admitted, subject to the same ruling. Defendants' Exhibits H-1 and H-2.

(Thereupon the documents referred to were marked Defendants' Exhibits H-1 and H-2 and received in evidence.)

Q. You say this beating continued for about ten minutes. What happened after that?

Judge Biggs: I don't think the witness said that. Did he say ten minutes? [303]

Mr. Symonds: Yes, your Honor.

Mr. Crockett: Yes, your Honor.

A. Well, at the same time I was asking them to let me go, see, and gradually they walked away.

Q. Were you taken to the hospital that morning?

A. Yes.

Q. And before the doctor gave you attention, did he take a picture of you?

A. He took a picture of me right away.

Q. Showing you this picture, is this the picture the doctor took of you?

(Testimony of Jacob Kalua Nahinu.)

A. Yes, that is me all right.

Mr. Crockett: We offer this in evidence.

Judge Biggs: There is to be only one picture?

Mr. Crockett: I have one other.

Q. Later on did the police take a picture of you after you had been cleaned up? Well, to refresh your memory, is that also a picture of you?

A. Yes, that is me.

Q. When was that taken?

A. That was after the doctor applied the bandage on my wound.

Mr. Crockett: We offer the two of them in evidence, if the Court please.

Judge Biggs: This will be I-1 and I-2. Same ruling. They are admitted. [304]

(Thereupon, the documents referred to were marked Defendants' Exhibits I-1 and I-2 and received in evidence.)

Q. Did you report this incident to the police?

A. Yes, we did.

Q. And during the day did they question you?

A. The police did.

Q. And were there any persons brought before you for identification by the police?

A. Well, the men that we tried to point out and identify by name and sight.

Judge Biggs: I couldn't understand. What was your answer?

A. The men that we felt were responsible that we were asked to identify.

(Testimony of Jacob Kalua Nahinu.)

Q. (By Judge Biggs): Did you identify any of them? A. Yes.

Mr. Symonds: I object to that answer, what he felt.

Judge Biggs: He was asked whether or not he identified any and he says he did.

Q. (By Judge Biggs): What did you identify them as?

A. As some of the guys that beat me up.

Judge Biggs: Some of the guys that beat him up.

Mr. Crockett: Cross-examine.

Mrs. Bouslog: No cross-examination.

(The witness was excused.) [305]

Judge Biggs: In respect to the testimony given by this last witness, Mr. Crockett, what incident does that relate to? How many persons were charged as a result of that assault?

Mr. Crockett: This is a case where I believe there were six that were charged, or with Makekau there were five. They were charged also under riot and assault and battery.

Judge Biggs: They were also included in the conspiracy to commit assault and battery?

Miss Lewis: If the Court please, they have not been indicted. This is a police complaint.

Mrs. Bouslog: The complaint charges riot and unlawful assembly.

Mr. Crockett: Yes; there was no conspiracy.

Judge Biggs: Proceed.

SAMUEL KALUA,

called as a witness for the defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name, please?

A. Samuel Kalua.

Q. Was Jacob Kalua Nahinu your brother?

A. Yes.

Q. You have different names? [306]

A. Yes.

Q. Were you on Lanai with your brother during last year, July, 1947? A. Yes.

Q. Living in the same house with him?

A. Yes.

Q. You recall some trouble at the house where you were living on the morning of July 15th?

A. That's right.

Q. What time did that trouble happen that morning?

A. The trouble started at 5:30 in the morning, 5:30 a.m.

Q. And will you now relate to the Court just what you did, and what took place at that time?

A. As I came back from the bathroom, that is outside of the building, where we have our quarters, our sleeping quarters, entering through the bedroom of the apartment of our room, I noticed some U.P.'s —as you may know—in other words, union police, had their bands; that is how I recognized some of them. They were outside of the building, close to

(Testimony of Samuel Kalua.)

the main road, and I seen they walked around, and I did not bother it, I just walked into the room, and I told to my brother, Jacob, what I have seen outside, and so he told me, "Well, there is nothing to worry; nothing that we have done."——

Mr. Symonds: I object to anything further along this line. [307]

Judge Biggs: Well, we had from your witnesses, Mr. Symonds and Mrs. Bouslog, plenty of hearsay. Now I propose that we get along with this hearing, even if it involves some hearsay. The Court is quite able to distinguish hearsay from real evidence. It is not as if we had a jury, and at the same time I say to the witness: We are not interested in what somebody said to you, unless it be an actual part of the proceeding. Now just tell us what happened.

A. After I told him about these boys, he says not to worry.

Q. What happened to you?

A. Well, right after that this thing happened; he went out, and as he approached to the bathroom, to get washed up—the door, I see the door slam, bang! and from the outside, and the person that was holding that door, he had a U.P. band on his arm, his right arm, and since that door—my brother was trying to push the door open and he could not, and then finally he gave a big jerk and the door flew open, and as the door flew open somebody hit him right on the forehead, square on the forehead, and then I saw a bunch of them come up, and then —(witness demonstrates).

(Testimony of Samuel Kalua.)

Q. Well, how do you mean, with his fist?

A. With his fist, a rock in his fist, right in his fist, openly, like this (demonstrating), and cracked him right on the forehead, and you just can imagine what would happen.

Q. We are not interested in that. What we are interested in [308] is what took place. What did you see next?

A. The next thing I seen was a lot of the boys coming to attack my brother.

Q. Did they attack him? A. They did.

Q. What happened?

A. Then I ran out of the room. I could not stay in there. I ran out of the room and tried to go out and help my brother the best way I can, and then I was rushed also and by some of these boys, you call—some of these nice boys we have, and then I was attacked.

Q. What happened to you?

A. I was cornered and put into a corner where they tried to beat me up as they did my brother, and fortunately enough I could get away; I got away, I struggled with them, and a couple of boys they tried to hold my arms down, but I moved around and I got away from them.

Q. And when you got away did any of them follow you? A. Yes, that's right; they did.

Q. What happened after that?

A. A bunch of boys started to trail me as I ran alongside of the road, and one of them tripped me

(Testimony of Samuel Kalua.)

and I was knocked down, sliding head first right into a ditch, a seven-foot ditch, and I fell right into it.

Q. And what happened after that? [309]

A. When I looked over me I seen the boys standing over me with sand-bag in his arm—in his hand.

Q. Did he hit you? A. He did.

Q. And what happened after that?

A. And this person say: "Are you going to work?" and I said "No," and he said, "You better not, you dirty rat."

Q. Well, did you get out of the ditch, finally?

A. I did.

Q. How did you get out?

A. I crawled out of the ditch by myself.

Q. Where were these persons? Had they gone then, or were they still there?

A. They were standing by, moving along gradually, away from me.

Q. Were there any—that is, as a result of what they did to you did they leave any marks or make any open wounds or bruises or anything like that?

A. There is none of that sort on me. My body was all scratched up from the (indicating) on the body, from the beating they had given me, from the arm down here (indicating).

Q. Your body was sore, but no actual cuts or anything? A. No.

Q. How many people or persons did you see there at that time?

(Testimony of Samuel Kalua.)

A. There was quite a bit of them, 20 to 25.

Q. And how many of them did you identify?

A. Well, I identified a few of them; not very much; most of them were new boys whom I had not seen down there.

Q. Were you also questioned by the police?

A. That's right.

Q. About that matter? A. Yes.

Q. And were some of these men brought before you for identification by the police?

A. Yes, they were.

Q. Did you identify them? A. Yes.

Cross-Examination

By Mr. Symonds:

Q. When you say that you saw your brother go into the bathhouse, where were you?

A. Right in the bedroom.

Q. And is there a window which you can see over to the bathhouse? A. That's right.

Q. May I see that in the picture? Which is the picture of the bathhouse?

A. You haven't got the picture of the bathhouse yet. This is part of the bathhouse here (indicating) but there is nothing to show where the door of that is, it took place.

Mr. Symonds: The witness is referring to Defendants' [311] H-1.

Q. You say this is a picture of the bathhouse, but it does not show the particular door that your

(Testimony of Samuel Kalua.)

brother went through into the bathhouse, is that correct? A. That's right.

Q. Is there a picture of the house among this group, in which you were located, at the time?

A. That's right; not here. This is the one here (indicating).

Q. (By Judge Biggs): What is the exhibit?

Q. Referring to Defendants' Exhibit G-4, and he points to the house in the center of the picture.

Is that the house in which you were living?

A. I am pretty sure that is the one.

Q. Are you sure or not? A. Positive.

Q. You are positive that this is the house. What is the house number? A. House number 7.

Q. Is that a picture of the grounds of the house?

A. This right here is the main road.

Q. Where, in relation to the front of the house, is the bathroom?

A. Down here (indicating). It should be right here in this corner here (indicating).

Mr. Symonds: The witness is pointing to the left-hand [312] corner of the picture.

Q. And how far from the left-hand corner of the picture, or the bathhouse, is the house located?

A. Not more than ten feet.

Q. About ten feet. Now you say there are windows in the back of the house? A. Yes.

Q. How many rooms are there in the back of the house?

A. Rooms? There is only one room, and to me,

(Testimony of Samuel Kalua.)

according to the rooms, there is three rooms in that building.

Q. Is the bedroom in the back of the house?

A. My bedroom, yes.

Q. Why is it you did not go over to the bathhouse with your brother?

A. I already came back from the bathhouse.

Q. Did you see anybody outside when you came back? A. Yes.

Q. Did you see people while you were outside, or after you came in? A. When I came in.

Q. You saw nobody when you were over in the bathhouse? A. Yes.

Q. You saw nobody when you were returning from the bathhouse? A. Coming in, yes.

Q. You did see someone? [313]

A. Yes, coming—that's right, I did.

Q. Now at the time you were in the bathhouse who else was in there, if anyone?

A. None that I remember.

Q. Nobody?

A. There was somebody in there which I don't know.

Q. Do other people use that bathhouse?

A. Oh, that is quite a bit more than 200 that use the place.

Q. And at 5:30 in the morning there was a large number of men who go to the bathhouse, is that correct? A. Yes.

Q. Isn't that the time for getting up to go to work on the island? A. That is about right.

(Testimony of Samuel Kalua.)

Q. And you say you saw nobody in the bathhouse at the time you were there?

A. I did not say I saw nobody. There was somebody in there.

Q. Was or was there not somebody in the bathhouse at the time you got there?

A. Yes, there was.

Q. How many people were there?

A. No idea.

Q. Can you estimate? A. I don't know.

Q. Was it one or was it fifty? [314]

A. There is a large number. How many, I don't know.

Q. You are not able to estimate? A. No.

Q. Now when you left did you see some men outside—is that correct?

A. Outside my building, yes.

Q. How many would you estimate were outside of the building?

A. There was quite a number of them there; about five.

Q. Now then you went into the house?

A. That's right.

Q. And you looked out of the window, and tu—— A. Turned the radio on first.

Q. You turned the radio on first?

A. Yes, at 5:30.

Q. And you looked out of the window?

A. Naturally, the window is right there.

Q. Well, did you look out of the window?

(Testimony of Samuel Kalua.)

A. I did.

Q. Did you see any men outside of the window?

A. Outside of the window?

Q. Yes. A. No.

Q. Well, from looking out the window could you see anybody? A. No, I could not see.

Q. Looking out the window could you see any men outside? [315]

A. I could not see at first.

Q. When did you see some men outside?

A. After my brother left the room to enter the bathhouse I was sitting right on the couch facing to the bathhroom, and I seen him enter and seen this door, and the first thing I knew about the attack, I glanced back again and there was this person holding the door.

Q. You were looking out the window at that time, is that correct? A. Yes.

Q. You were in the house?

A. That's right.

Q. And you saw somebody standing with their hand on the bathroom door?

A. After it was slammed shut, yes.

Q. How many people did you see standing there?

A. One at that particular moment.

Q. Just one?

A. Just one at that particular moment.

A. And then what happened?

A. Then I seen the door—my brother was trying to push the door open, and after the door flew

(Testimony of Samuel Kalua.)

open this person that was holding the door hit my brother on the forehead, and then I seen these police coming.

Q. Which hand did he hit him with? [316]

A. His right hand.

Q. Did he have his fist closed?

A. Like this. (Demonstrating).

Q. And you could see from the room whether the person who hit your brother had his fist open or closed, is that correct?

A. I could see plainly.

Q. You could see plainly? A. That's right.

Q. He hit him with his right hand?

A. That's right.

Q. And the first was closed?

A. It was not closed; open this way, partly closed (demonstrating); you could see something sticking out here (indicating); that is a rock.

Q. You saw something sticking out of his hand?

A. That's right.

Q. It could have been a stick? A. No.

Q. A piece of iron? A. No.

Q. You said you saw something?

A. It could not be a stick; it could not be an iron.

Q. It could have been a small piece of iron?

A. No.

Q. How are you positive you saw this man with a rock in his [317] hand?

A. You grab something bigger than your fist and how would you hold it?

(Testimony of Samuel Kalua.)

Q. That is your explanation that it was a rock, is that correct? A. It was a rock, yes.

Q. You said he grabbed something the size of your fist? A. He grabbed something.

Q. You saw something in his hand the size of his fist? A. A stone.

Q. How do you know it was a stone?

A. I am pretty sure it was a stone.

Q. You are sure, are you? A. Positive.

Q. You are sure what it was? Are you sure it was a stone? A. A stone.

Q. (By Judge Biggs): He said now, "Are you sure it was a stone?" A. It was a stone, yes.

Q. What color was it?

A. The red dirt, or color of the dirt over there in Lanai.

Q. And your testimony is that you are positive that it was a stone?

A. It is a stone, positively.

Q. Could it have been a clod of red dirt, hard red dirt?

A. Would that give him a cut over his eye?

Q. Then what happened after you saw this person strike your brother over the eye?

A. As I said, I seen a bunch of boys coming to him.

Q. Where did these boys come from, which direction?

A. They came from my left-hand direction, from the direction of the bathroom.

(Testimony of Samuel Kalua.)

Q. Then what happened?

A. Then I left my room to go out and aid my brother.

Q. Did you go all the way over to the bathroom?

A. Close to it, but I didn't get to him.

Q. And then what happened?

A. Then this bunch broke up; some went to my brother, and some attacked me.

Q. You were pretty busy, were you not? When they attacked you, what did you do?

A. When they attacked me I tried to defend myself? A. Say about 20 or 25.
I can to my brother.

Q. From then on you did not see what happened to your brother? A. I could see, yes.

Q. In other words, you could see what was happening to your brother, and at the same time you were attempting to beat off these other men, is that correct?

A. I was trying to go through this bunch that was trying to attack me. [319]

Q. How many people where there altogether outside the bathhouse at that time that you say the fighting was going on with your brother and yourself.? A. Say about 20 or 25.

Q. You were able to estimate that, is that right?

A. That's right.

Judge Biggs: Anything by way of redirect?

Mr. Crockett: Nothing.

(Testimony of Samuel Kalua.)

Examination by Judge Metzger:

Q. Was there a light out in the yard?

A. Yes, it was quite light.

Q. Electric light?

A. No, it was bright daylight, almost.

Q. I was wondering when and where you identified these men that were there?

A. Well, I knew some of them, that I used to work with them.

Q. When and where? Where were they when you identified them? A. At the police station.

Q. How long afterwards?

A. Well, I cannot say, but soon afterwards.

Q. How many did you identify?

A. I identified all of them that had anything to do.

Q. How many did the police bring in?

A. They brought in about seven of them. [320]

Q. For identification? A. Yes.

Q. And you identified all of them?

A. Well, I identified those that were present at the time I was attacked over there; there was about five of them.

Q. Five out of seven? A. Yes.

Q. And two you did not identify?

A. Two I was not positive of.

Judge Biggs: Anything further?

Mr. Crockett: Nothing, if the Court please.

(Witness excused.)

Mr. Crockett: Our next witness will take quite

a bit of time, because I intend to show the Paia incident.

Judge Biggs: How long a time do you estimate?

Mr. Crockett: Well, I imagine about an hour at least.

Judge Biggs: How many witnesses do you have?

(Discussion relating to witnesses who are coming from Maui and other witnesses counsel expects to call, and as to the time counsel will be prepared to go ahead with the case.)

Judge Biggs: The Court will stand adjourned until 9:30.

(Whereupon an adjournment was taken until 9:30 o'clock a.m. on Monday, April 26, 1948.)

Monday, April 26, 1948

Mr. Crockett: We are ready to proceed, if your Honor please.

Judge Biggs: You may proceed, Mr. Crockett.

Mr. Crockett: If the Court please, there has been introduced in evidence some moving pictures, and since they cannot be shown perhaps just at the time the witness testifies, counsel says she has no objections to having the pictures shown now, prior to calling Mr. Freitas, so that the Court would have an idea of the scene and the locality where all of this occurred.

Judge Biggs: Very well.

Mr. Crockett: May the court-room be prepared?

Judge Biggs: Yes.

Mr. Crockett: Before we do that, if the Court

please, I would like to offer in evidence three maps which we have been able to secure, the first map showing the Hawaiian archipelago, all of the islands as a group.

Judge Biggs: May I see it?

Mr. Crockett: The second will show the Island of Maui and the third will show the Island of Lanai and help establish the fact that Kaumalapau Harbor is on the sea coast.

Judge Biggs: Any objection? Let them be marked as one exhibit. I forget the letter. [322]

The Clerk: Exhibit J-1, 2, and 3.

Judge Biggs: Exhibits J-1, 2, and 3.

Mrs. Bouslog: Your Honors.

Judge Biggs: Yes.

Mrs. Bouslog: There are a number of objections in the record and out of the record to a portion of these films which were not taken during the time of the incident happening, but in view of the fact that there isn't any jury present I think your Honors will be able to tell from the pictures themselves that many of them do not bear directly upon the incident itself.

Judge Biggs: Very well. Or if you desire, it may be of aid to the Court if you would file a memorandom respecting those portions which you conceive were not taken during the course of the incidents.

Mrs. Bouslog: Yes. Your Honors will recall at the close of my case I asked permission to show certain films.

Judge Biggs: Yes.

Mrs. Bouslog: Which have to do with the locale of the Kaholakula incident. I want to state that at the time of bringing the matter to the attention of the Court and asking for permission to show it I had not for almost a year had an opportunity to examine the films. I think I may have left the impression with the Court that there are some scenes upon the day of the 16th of October. I am informed by the people who were present that they were all taken at the immediate locality but there are no scenes of the actual incident, but they do [323] show the same place and the same kind and character of picketing that was going on on that particular day.

Judge Biggs: They are received subject to the same motion. You have no objection to their being shown at the same time, I suppose?

Mr. Crockett: No objection.

Judge Biggs: By the same operator?

Mrs. Bouslog: They can be shown by the same operator. They are 8 mm films, your Honor.

Judge Biggs: Very well. Let's get the motion pictures, all of them, out of the way.

Miss Lewis: Do I understand Mrs. Bouslog will put on a witness who will testify that this is the same kind of what Mrs. Bouslog calls "picketing" that was going on at the time we are testifying about, or what is the offer? I don't understand it.

Judge Biggs: I think she proposes to show scenes of peaceful picketing. Isn't that it? You will have to identify the films by some witness.

Mrs. Bouslog: I think Mr. Crockett after he sees the film will stipulate they were taken in Paia. The person who took the pictures is not here, but there is a person present who was present at all times when the pictures were taken.

Judge Biggs: I think they should be identified for the record, unless they be stipulated. [324]

Mr. Crockett: I have never seen the pictures.

Judge Biggs: We will see what they are. We have no jury, so we can allow a wide latitude.

Miss Lewis: I don't want the record to be full of objections. Mrs. Bouslog spoke of the time of the picket lines were closed. I am sure the Court understands that matter.

Judge Biggs: Certainly. By stipulation.

Miss Lewis: It is not stipulated by us that any such thing occurred.

Judge Biggs: Let's see what the pictures are. It is pretty hard to pass on pictures until you see them. I think we all understand the nature of your objection.

It is going to be very hot in here, I am afraid. I don't think it need to be quite in that position; it is supposed to be a showing in open court, so that the public are entitled to see it also. There is no reason why the spectators shouldn't come within the bar of the Court.

Mrs. Bouslog: Before the pictures start I would like to have the operator advise the Court and counsel whether or not the pictures are being run at the same speed at which they were taken. I believe one

of the cameras was set at 32 frames per minute. I don't know whether the record shows the speed at which the other pictures were taken.

Judge Biggs: If the operator is to answer the question, I should think he should be sworn. You have no objection to that course? [325]

Mr. Crockett: No.

Judge Biggs: Swear the operator, please.

LEONARD R. SCHWEITZERHOFF.

a witness called by and on behalf of the plaintiffs, being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Do you know whether or not your machine will be set at the speed that the pictures themselves were taken?

A. I have adjustments on the machine and I can run it at any speed you want; even stop it if necessary.

Mrs. Bouslog: I don't know. Mr. Crockett, do you know the speed at which the three films were taken? I know one film was taken at 32 frames per minute; I don't know about the others.

Judge Biggs: Mrs. Bouslog, isn't your question rather empirical? I suppose all of us have seen thousands of feet of motion picture film, and we can probably tell from our own experience; the

(Testimony of Leonard R. Schweitzerhoff.)

Court probably can tell from its own experience whether the pictures are being run slower or faster —slow or fast. We are all familiar with human movements.

Mrs. Bouslog: Of course, it depends on how fast——

Judge Biggs: I realize that. I have had many of them in court-rooms heretofore; I think all the judges have. I have sat in a great many patent cases. I think even if the witness [326] cannot answer the question we will be able to determine the speed.

The Witness: Does it make any difference which is shown first?

Judge Metzger: I don't know anything about it.

Mr. Crockett: If the Court please, for the purpose of the record, I think all of those films are marked. I would like to ask the operator, as he shows them to give the exhibit number as shown on the case. That number applies to the number which was given in the court below, and later we can have them marked with an appropriate number for this Court.

Judge Biggs: Will you state what the label is?

The Clerk: Defendants' Exhibit E-1.

The Witness: Yes. Defendants' Exhibit E-1.

Judge Biggs: The same ruling, as to relevancy. Admitted, subject to the same ruling as to relevancy.

Mrs. Bouslog: I think that is an error. The defendant didn't put any films in court.

(Testimony of Leonard R. Schweitzerhoff.)

Judge Biggs: I cannot hear you.

Mrs. Bouslog: I say, I think that is an error. The defendants below did not put any films in evidence.

Judge Biggs: The record will show; the record will show.

Would you say, Mr. Operator, that is normal speed?

The Witness: Yes, at the present time it is. You can slow it down or increase it. [327]

Judge Biggs: It seems to me that is about right; it seems so. Do counsel agree as to that?

Mr. Crockett: We do, yes, sir.

Judge Biggs: Both of you. Mrs. Bouslog, do you?

Mrs. Bouslog: Yes, sir.

Judge Biggs: Judge Metzger thinks it should be just a little faster, and so do I.

What is the reason for the blank, Mr. Operator?

The Witness: The film was not exposed.

Judge Biggs: I see.

The Witness: That is the end of that film.

Q. (By Mrs. Bouslog): Mr. Operator, are there any spaces on that particular film?

A. Just on the first feet of the lead.

Q. In other words, the first is not the film?

A. No, that is only spliced, an additional lead which was spliced on.

Judge Biggs: An additional lead is spliced on for the purpose of showing it.

(Testimony of Leonard R. Schweitzerhoff.)

The Witness: Yes, your Honor. The next is Defendant's X-4.

The Clerk: E-4, isn't it?

The Witness: E-4, yes.

Judge Biggs: Mr. Thompson, that should have its number as part of the same exhibit.

The Clerk: Yes; it is in one series. [328]

Judge Biggs: Yes. Thank you.

Miss Lewis: If the Court please, to tie in with the transcript from the district magistrate's court, it would be helpful if we could establish what the number was in that court. As well as the number Mr. Thompson—the roll which was just shown in this court was what?

The Clerk: Defendants' Exhibit E-1.

Judge Biggs: What was that marked in the district magistrate's court?

The Clerk: It is not marked here. There is some pencil writing.

Judge Biggs: What is the pencil writing?

The Clerk: "Exhibit C."

Judge Biggs: Pass it over to Miss Lewis. Can you tell, Mr. Crockett and Miss Lewis?

Mr. Crockett: Pardon me. I see it is marked by the clerk, that the mark which was put on the front, which we referred to as Defendants' Exhibit E-1, was the mark given by the clerk of this Court.

Judge Biggs: Yes; that is correct.

Mr. Crockett: On the other side of the film there appears in pencil marking "Exhibit C. 7/28/47.

(Testimony of Leonard R. Schweitzerhoff.)

Lanai district court. Exhibit C." That will connect it up.

Judge Biggs: That will clear it up.

Miss Lewis: Stamped with "E-4" marked in this court; [329] what was that in the Lanai court?

The Clerk: It is typed out "Exhibit F." That is the only identification.

Mrs. Bouslog: Mr. Crockett, for my information, can you state whether this was Mr. De Mello's film?

Mr. Crockett: The one that was just shown I believe was taken by a man by the name of Mr. Bilson.

Judge Biggs: Bilson?

Mr. Crockett: As it is marked on the case, if the Court please.

Miss Lewis: That all appears in the transcript in evidence here.

(The showing of another film was commenced.)

The Witness: That was one splice.

Judge Biggs: What is that, a bathing beauty? I think you are now a little bit on the slow side.

The Witness: It is not exposed now.

Judge Biggs: This film was not exposed in part, is that correct?

The Witness: Yes, your Honor.

That is all of that, your Honor.

Judge Biggs: Mrs. Bouslog, is your operator here?

(Testimony of Leonard R. Schweitzerhoff.)

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: Ready to proceed when this showing is over?

The Witness: The next, I think, is Exhibit A-E-B. [330]

The Clerk: E-3.

The Witness: E-3. "Lanai City incident" on the cover, "7/14/47," is the date, 4:30 p.m. "Taken by Lieutenant De Mello."

Judge Biggs: The number here, please, Mr. Thompson?

The Clerk: Defendants' Exhibit E-3.

Mr. Crockett: Did he say what was there in district court?

Judge Biggs: Yes.

Mr. Crockett: I am sorry.

The Witness: "Lanai City incident."

Judge Biggs: Give us the number.

The Clerk: Exhibit A.

Miss Lewis: Exhibit A in the district court.

The Witness: A splice. A splice. The end.

Judge Biggs: Isn't there one very small film?

The Witness: Yes, your Honor, there is. It has to be put onto a reel before it can be run.

The next is Exhibit 2.

The Clerk: Defendants' Exhibit E-2.

The Witness: Defendants' Exhibit E-2.

Miss Lewis: Did you say E-2, Mr. Clerk?

The Clerk: Yes, that is correct. E-2.

Miss Lewis: That is a small roll, not on a reel.

(Testimony of Leonard R. Schweitzerhoff.)

The Witness: Yes.

(The showing of the film was commenced.)

The Witness: That is all.

Judge Biggs: Can you proceed now, Mrs. Bouslog?

The Witness: Do you mind if I leave this on the reel for you?

Mr. Crockett: Mrs. Bouslog, do you object to this being left on the reel? It was simply a small roll, not on a reel, as it came from the clerk.

Judge Biggs: Do you have any objection to it being left on the reel, Mrs. Bouslog?

Mrs. Bouslog: No, your Honor.

Judge Biggs: Let the record show, then, that it has been taken from the roll to the reel by the operator and will remain on the reel; and it should be marked, Mr. Thompson. Keep the original container, of course. Thank you very much.

Mrs. Bouslog: Your Honor, I will put a witness on after the films are shown to explain the times and places they were taken. I want to state that we will stop showing the pictures—these are spliced pictures; they were made up to show parts of the strike—we will stop showing them when the clear—when the color films cease, because then the entertainment committee on the picket line takes over with a hula dance.

Judge Biggs: It might add greatly to the edification of the Supreme Court if an appeal were taken by the losting party.

(Testimony of Leonard R. Schweitzerhoff.)

(The showing of the film was commenced.)

Judge Biggs: It is pretty clear. [332]

Mrs. Bouslog: They are very clear pictures, your Honor.

The Operator: You will notice we let workers go through the line. That is an incident.

Judge Biggs: Don't testify. You will just show the pictures here now.

Mrs. Bouslog, this is the commencement——

Mrs. Bouslog: I think we can stop it now.

Judge Biggs: No, there is a little bit more.

Mrs. Bouslog: This is the parade of the strikers. If you wish to wait until we get through with the color film——

Miss Lewis: Are you putting the whole film in, Mrs. Bouslog?

Mrs. Bouslog: No. That is all, your Honor.

Judge Biggs: Very well. That concludes the portion you desire to show, Mrs. Bouslog?

Mrs. Bouslog: Yes, your Honor.

The Court: All right. The Court will stand in recess for about five minutes.

Miss Lewis: I think the record should show at what point the exhibit stops, at the end of the parade.

Mrs. Bouslog: At the end of the color film.

Judge Biggs: A little past the color film.

Mrs. Bouslog: Yes; there was one frame or so past the color film.

(Witness excused.)

Judge Biggs: Very well; the Court will stand in recess for five minutes. [333]

(A short recess was taken at 10:45 a.m.)

Judge Biggs: Are you ready to proceed, Mr. Crockett?

Mr. Crockett: Yes, if the Court please. Before calling the witness, if the Court please, I would like to have the record identify the small roll of film which was shown to the Court and which has been marked by the clerk of this Court as Defendants' Exhibit E-2. This roll of film, if the Court please, was originally a part of the roll which is now marked in this Court as Defendants' Exhibit E-3, and it is referred to in the transcript, which has been stipulated to be an exhibit in this court, the transcript of the evidence which was taken in the matter of the Territory v. Agliam, and referred to particularly on pages 13, 14, and 17—14 to 17, inclusive. It was separated from the original roll, taken by the same person but separated from the original roll because it portrayed incidents that occurred or it was taken prior to the incident which actually occurred at the time the defendants were arrested.

Judge Biggs: Is there any reason why these films, all of these films, those of the Attorney General as well as those of the plaintiffs, should not be stipulated into evidence, subject to a motion, subject to any question as to relevancy, and, of course, subject to our ruling respecting the motion to strike?

Mr. Crockett: I believe they have been already, if [334] the Court please.

Mrs. Bouslog: We have none.

Judge Biggs: They have not been.

Mrs. Bouslog: It is all right with us, your Honor.

Mr. Crockett: That is true as to our film, because the transcript shows the time and place and who took them. But as to their films, I do not believe we have had the time or place identified in the record.

Judge Biggs: It is quite true they have not, but very obviously the scenes occurred during the course of this strike. Can you go so far as to stipulate that they are pictures taken during the course of the strike?

Mr. Crockett: We will so stipulate. I have never seen the pictures before, but I am sufficiently familiar with the locality there and the things that occurred that I recognize them as pictures taken during the course of the strike, but prior to the incident referred to by counsel. I believe one picture was taken just the day before.

Mrs. Bouslog: They go through the period September, through the first part of October, the exact date on which they stop I do not know.

Judge Biggs: Then it is stipulated by both sides that all the films are introduced and may be marked in evidence as exhibits, received and considered by the Court, subject to any question as to relevancy?

Mrs. Bouslog: Yes, your Honor

Judge Biggs: And subject to a motion to strike.

Mrs. Bouslog: Yes, your Honor I believe the arrangement was made with Mr. Crockett or the clerk of the circuit court, Second Circuit Court, on Maui, that there would have to be reproductions made of these films.

Judge Biggs: Yes. Let's get the stipulation of record. You so stipulate?

Mrs. Bouslog: Yes.

Judge Biggs: Do you so stipulate, Mr. Crockett?

Mr. Crockett: We so stipulate.

Judge Biggs: Very well. The Court receives these exhibits, with the express understanding that copies will be substituted therefor, since they are exhibits already in evidence in a Territorial court.

Mr. Crockett: Shall we proceed, your Honor?

Judge Biggs: Yes.

ANDREW S. FREITAS

a witness called by and on behalf of the defendants, being first sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Q. What is your name?

A. Andrew S. Freitas.

Q. What is your occupation, Mr. Freitas? [336]

A. Assistant chief of police, County of Maui.

Q. You reside within the County of Maui?

(Testimony of Andrew S. Freitas.)

A. Yes, sir.

Q. Where? A. Kihei, Maui.

Q. Do you have your commission as such officer with you?

Judge Biggs: It is conceded, is it not?

Mrs. Bouslog: Yes, your Honor.

Mr. Crockett: If the Court please, I have Mr. Freitas' commission and also a photostat copy, which I would like to offer in evidence.

Judge Biggs: Let it be marked.

The Clerk: Defendants' Exhibit K.

Mr. Crockett: This is the original.

Judge Biggs: Substitute a photostat therefor. A photostat is substituted, without objection.

(The document referred to was marked Defendants' Exhibit K, for identification, and received in evidence.)

Q. (By Mr. Crockett): Your commission recites you were appointed in 1943. And have you served as such, as assistant chief of police, continuously since that time? A. Yes, sir.

Q. And particularly during the years 1946 and 1947? A. Yes, sir.

Q. Now, Mr. Freitas, were you present in court and did you [337] see the pictures which were exhibited with reference to an incident that occurred at Kaumalapau wharf on the Island of Lanai?

A. Yes, sir.

Q. Were you present on Lanai during the month of July, 1947? A. Yes.

(Testimony of Andrew S. Freitas.)

Q. Were you present at the incident which occurred at that time? A. Yes.

Q. That is, at Kaumalapau? A. Yes.

Q. While the scene is fresh in the minds of the Court, will you tell us about what time did you go down to the wharf?

A. I went to the wharf at 3:05 p.m.

Q. How did you happen to go to the wharf at that time?

A. Trucks had been delivering these pineapples down there to the pier and I was informed that a barge was arriving from Honolulu to take pineapples.

Q. Who accompanied you down to the wharf?

A. I had Captain Seabury, Officer Takehoma, and Officer Medeiros with me.

Q. Were there any other officers there that arrived there before or after you did?

A. Several minutes later three others arrived.

Q. How many police officers were there altogether? A. Six, including myself. [338]

Q. How large a force is normally located on the Island of Lanai?

A. It consists of one district commander and three patrolmen.

Q. Then how many officers with you were from the Island of Maui?

A. There were four from the Island of Maui with me and two from the Island of Lanai.

Q. That is, down on the wharf?

(Testimony of Andrew S. Freitas.)

A. Yes, sir.

Q. The record shows there was a strike in progress at that period of time. When you arrived at the wharf did you see any persons who were then on strike or apparently on strike? A. I did.

Q. About how many would you say were present at about the time when you arrived?

A. When I first arrived there were just about 15 or 16 men there.

Q. Were you acquainted with any persons who were employed by the company but not on strike? Did you notice any of those persons down at the wharf at that time? A. Yes.

Q. These men who were on strike there, what were they doing down at the wharf?

A. They were sitting on the stone wall there.

Q. Were any of them engaged in picketing of any nature? [339]

A. There was no picketing when I first arrived there.

Q. Showing you pictures which have been offered in evidence as Defendants' Exhibits C-1, C-2, and C-3, showing the stone wall, I will ask you to explain those to the Court, if that is the stone wall you are referring to and where those men were sitting when you saw them.

A. Yes, this is the stone wall.

Judge Biggs: What is the number on the back of that?

A. This is Defendants' Exhibit C-1.

(Testimony of Andrew S. Freitas.)

Judge Biggs: Thank you.

Q. (By Mr. Crockett): What does that picture, Exhibit C-1, portray, Mr. Freitas? Would you explain that for the information of the Court?

A. That is the dock at Kaumalapau; that is looking out to the ocean from Lanai City.

Q. And is that as you approach the wharf or is that as you approach Lanai City?

A. That is as you approach the wharf from the direction of Lanai City.

Q. At about what portion of that stone wall were these men sitting at that time, when you arrived?

A. They were mostly down at the makai end.

Q. Now would you, that is, without questioning, Mr. Freitas, give us your own version of what happened. Tell your story consecutively, without interruption by me, and perhaps the [340] Court will get a clearer view.

A. About 3:30 the majority of these union men started to arrive in vehicles, some arrived in trucks, and they got off there and immediately after getting off they formed a picket line. They picketed about fifteen minutes and then asked me for permission to sit on the wall. So I told them it was perfectly all right with me. So they sat on the wall until the barge was secured. The barge was secured, by my watch, at 4:05 p.m. They got up and started to picketing. Then the supervisors started to mount the pineapple bins there. Three of them remained on the platform and two got on top of the bins, and the crane operator got onto the crane. And just as

(Testimony of Andrew S. Freitas.)

soon as he operated the crane and got it over the bin and these two supervisors were on top of the bin, trying to hook on this stretcher, that is when all these men broke loose. They started to yelling and rushing across. I yelled to them to stop; I yelled about half a dozen times, told them to go back, they would only get into trouble. I tried to stop them. You couldn't. They ran, ran around there. The place is so open there was nothing we could do. We were absolutely helpless. They refused to go on back.

Mrs. Bouslog: May I ask the Court to instruct the witness not to make or state his conclusions, but just what he saw and heard at the time.

Judge Biggs: Just tell what you saw and did, not your conclusions, Mr. Freitas. [341]

A. I saw these men, from eight to ten, mount the bins and I could see them over there just keep punching; they were just punching away over there. At that time I couldn't see any individual, but as they started to punch I saw one of the supervisors—Johnson—jump off the bin. When he jumped off the bin I looked in the direction of the crane and I saw the crane operator dismounting the crane, and Maile, one of the union men there, in the crane house. As the crane operator jumped onto the ramp there he ran towards my direction and about 15 or 20 men chased him. As he got near me he cut across and went to the end of the wall, and they just chased him, and they started punching him, and he was trying to protect himself, and when I kept

(Testimony of Andrew S. Freitas.)

yelling at him to come back here, but he got down to the dock area, where the small boat ties up, and as he got down there, there were several men, about six or seven, who started to punch him, and he got to the edge of the water, when he fell into the water. As he was in the water, men on the upper part of the pier started throwing pineapples at him. I noticed him go down once and then he came right up again, and he started to swim to the launch.

In looking back to the bins, there were a few more men on top of them, but the other supervisors were on the barge. So I told Diego Barbosa, who seemed to be the leader of them, to call his men back, that I would stop the work, nobody would work. There was no use of them carrying on any further. So he started to call the men back, and they went back to the wall [342] where they started to sit on the wall and on the street.

Q. What happened after that? They all went back and sat on the wall? A. That is right.

Q. That covers the incident in general?

A. Yes, sir.

Q. Now, going back now to one of the things you mentioned at the beginning. You said at 3:30 they formed a picket line and then started to picket? A. Yes.

Q. Will you tell the Court what was the nature of the picket line that they had there? That is, about how many men were in the picket line, the intervals which might have been between the men, and whether they were moving or not moving?

(Testimony of Andrew S. Freitas.)

A. I would say in the neighborhood—I first counted them when they arrived there. I counted up to 126 and then they continued coming, and I was trying to observe things, but they kept coming. But I would estimate the amount of men there was in the neighborhood of 300.

Q. Were all of those 300 in the picket line or were some of them sitting on the wall?

A. There was about—a little over 200 in the picket line and a good 25 or 30 still sitting on the wall.

Q. Did this picket line move or was it standing?

A. Yes, they moved. Where they were picketing, they were very loose. What I mean, th*e*re were about three to five, sometimes [343] seven feet apart.

Q. In which direction were they moving; that is, straight or back and forth or around in a circle?

A. They had two columns and they were sort of going around in a circle there.

Q. Referring to the map of Kaumalapau Harbor, which the record shows to be Defendants' Exhibit B, could you just point out, roughly, on there where this picket line was moving, so the Court could see that?

A. They were moving from the ocean side, makai to mauka.

Q. The ocean on the map is the seawall?

A. The seawall, yes.

Q. (By Judge Biggs): The lower left-hand side of the picture? A. That is right.

(Testimony of Andrew S. Freitas.)

Q. Or map.

Mr. Crockett: For the benefit of the Court, makai means on the sea side.

Judge Biggs: Yes. We have had that explained to us.

Q. (By Mr. Crockett): You say they were moving makai to mauka. Were they coming back at all; were they circular?

A. They were circular.

Q. The map shows a line which says "Painted line." Did you notice that painted line, whether it was marked or how it was marked?

A. It was marked "Company Property."

Q. (By Judge Biggs): That is to say, it was a boundary [344] line of the company property?

A. Yes, sir.

Q. (By Judge Metzger): When was it marked?

A. That I don't know, sir. It was marked when I arrived there.

Q. Was it freshly painted?

A. Yes, it had been freshly painted.

Q. (By Mr. Crockett): Does that line appear on any of those pictures? A. Yes.

Q. Which picture?

Judge Biggs: Refer to the exhibit number, please. Which exhibit is it?

Judge Metzger: Exhibit E-5.

Judge Biggs: Kapu is the Hawaiian word for forbidden, is it not?

Mr. Crockett: Yes, if the Court please.

(Testimony of Andrew S. Freitas.)

Judge Biggs: No Trespassing.

Will you speak so the reporter can hear you, please?

A. It is around to the left. The center line here indicates the center portion of the street. But this line to the left, where you see the sign here, indicates the line we are speaking of.

Q. (By Judge Biggs): I think you have another exhibit in your hand. [345]

A. C-1.

Q. (By Judge Metzger): It is on this one, isn't it? A. Yes, sir.

Judge Metzger: C-2.

Judge Biggs: Yes.

Q. (By Mr. Crockett): How long did that type and form of picketing continue, Mr. Freitas?

A. I would say at the most about eight to ten minutes.

Q. And at the end of that time, what happened then?

A. They just broke ranks and just charged.

Q. Was any person acting as a kind of leader or supervisor or in charge of this line?

A. Yes, sir.

Q. Who was that?

A. They had five men in the front of this picket line and they had arm bands which they had on—UP; they informed me that they were union police. There was one individual—Diego Barbosa—was the spokesman for them.

(Testimony of Andrew S. Freitas.)

Q. Is Diego Barbosa one of the persons who was arrested and charged in the case of Territory of Hawaii v. Diego Barbosa? A. Yes, sir.

Q. You mentioned that they suddenly broke loose and rushed across this line. Did anybody give any signal or appear to give any signal when that was done? A. Yes, sir. [346]

Q. Who gave the signal?

A. Diego Barbosa.

Q. Could you show or tell the Court what kind of signal he gave?

A. He gave it this way, with his hand (indicating) three times.

Judge Biggs: That will not appear in the record. Suppose you describe it.

Mr. Crockett: The record shows that the witness stretched out his arm, slightly above the position of the level of the shoulder, with fist closed, and waves from the back towards the forward position three times.

Q. (By Mr. Crockett): And at the time he gave the signal, did you hear him say or make any noise of any kind?

A. Yes. At the same time he was yelling, but I couldn't make out what he was saying.

Q. Could you illustrate how he yelled?

Judge Biggs: Did he yell loudly?

A. Yes, he yelled very loudly, but as I say, I didn't get what he was saying.

Q. (By Mr. Crockett): Did it sound like he

(Testimony of Andrew S. Freitas.)

was saying anything or did it sound like he was just calling out as a kind of signal?

Mrs. Bouslog: I object.

Judge Biggs: I think the objection will have to be sustained, Mr. Crockett. The witness testified that he gave a [347] signal with his arm and yelled out loudly.

Q. (By Mr. Crockett): Did he yell more than once or just once?

A. Oh, I would say more than once.

Q. And when the crowd rushed forward, how did they go forward; did they go in a quiet, orderly manner?

A. No. They rushed right straight ahead.

Mrs. Bouslog: Wait just a minute. I object because Mr. Crockett is leading his witness.

Judge Biggs: This is a rather important portion of the testimony. We of course have a right to accept leading questions. We have done so repeatedly. I think it would be better not to lead in this particular instance. Mr. Freitas is a police officer, an experienced person, and just have him characterize it in his own way.

Mrs. Bouslog: I want to make the further objection, your Honor, that the question has been asked and answered once.

Judge Biggs: We will overrule the objection and ask Mr. Crockett not to reiterate that same line.

(Testimony of Andrew S. Freitas.)

Q. (By Mr. Crockett): Would you describe how the crowd rushed forward, Mr. Freitas?

A. I saw some just run right straight for the pineapple bins and I saw others run sort of low, run to the edge of the bins. And I kept watch on the first few. I kept my eyes on them; especially on Barbosa there. [348]

Q. May I ask: Was there any noise there?

A. There was all kinds of yelling. Just yelling. I never heard so much yelling in all my life, in all my police experience. These fellows were yelling at the top of their voices.

Q. And by "these fellows" whom do you mean?

A. I mean the union men there.

Q. And with respect to the people rushing forward, whom do you mean? Do you mean the people who were rushing forward——

A. (Interrupting): At the same time they were running they were yelling.

Q. You mentioned that they mounted the bins. Are the bins that they mounted shown in any of those pictures which you have before you; if so, refer to the number and point them out.

A. These photographs show some on a truck here.

Judge Biggs: Will you refer to the exhibit, please?

A. That is on C-5.

Mr. Crockett: If the Court please, these have not been heretofore offered in evidence.

(Testimony of Andrew S. Freitas.)

Q. (By Mr. Crockett): Showing you two other pictures.

A. These two are two good pictures but they are not marked.

Judge Biggs: Do you intend to offer them?

Mr. Crockett: Yes, I do, if the Court please.

Judge Biggs: Will you show them to Mrs. Bouslog and Mr. Symonds? Have you seen them? You offer them first. Three pictures or five pictures, which is it? [349]

Mr. Crockett: Three, if the Court please.

Judge Biggs: The witness identifies them as pictures taken at the scene and showing—what do you call them—bins?

Mr. Crockett: Bins, and the wharf in general at that locality.

Judge Biggs: Admitted as Exhibit L, subject to the same objection as to relevancy, and the same ruling.

The Clerk: L-1 and L-2 and L-3.

(The documents referred to were marked Defendants' Exhibits L-1, L-2, and L-3, and were received in evidence.)

Q. (By Mr. Crockett): Do these pictures, Mr. Freitas, which you have examined, show the bins to which you referred in your testimony?

A. Yes, sir.

Q. Prior to this incident, what were the conditions of those bins?

A. They were all intact. By that I mean the pineapples were in the bins.

(Testimony of Andrew S. Freitas.)

Q. The picture shows the sides of the bins lowered, with pineapples strewn on the wharf. Did that condition occur or was that the condition existing before the picture was taken or was that after? I will withdraw the question.

Judge Biggs: Your question is not clear. If they are shown in the picture, it must have existed at the time the picture was made.

Mr. Crockett: I will withdraw the question.

Q. (By Mr. Crockett): Is that the condition which existed prior to the time that those men rushed forward, or is that the condition which existed after the men rushed forward?

A. After the men rushed forward.

Judge Biggs: These are the pictures, L-1 to L-3, Mr. Crockett?

Mr. Crockett: Yes, if the Court please.

Q. (By Mr. Crockett): You mentioned the fact that some of the supervisors mounted on the bins. Do these pictures show the bins on which they mounted? A. Yes.

Q. Which pictures are you referring to?

A. That is Exhibits L-1, 2, and 3.

Q. And can you point out the particular bin where they were working?

A. I am not quite sure now, but I am almost sure that they were—the bin they were working was this first outside bin, which is indicated on this picture by the number 4574.

Q. (By Judge Biggs): When you say "out-

(Testimony of Andrew S. Freitas.)

side bin," will you give the direction in the picture? A. To the right of the picture.

Q. (By Mr. Crockett): How do these bins normally get down to the wharf, Mr. Freitas?

A. They are hauled by truck.

Q. That is, the entire bin is hauled at one time?

A. Yes, sir. [351]

Q. And then what is the procedure after that?

A. After they get to the dock they hook this spreader on it and pick it up and put it on the truck.

Q. Is the spreader shown in this picture?

A. Yes.

Q. Where is that? A. It is in Exhibit L-2.

Q. (By Judge Biggs): It is also in Exhibit L-3, is it not, Mr. Freitas? Isn't this the spreader?

A. Yes, sir.

Q. (By Mr. Crockett): What do the men that are working on top of the bins have to do with relation to that spreader?

A. They hook that spreader to a sort of eye-hook, there are four of them on the four corners of the bins.

Q. And then what is done?

A. And it is raised by the crane operator.

Q. Where is it carried to then?

A. It is carried into the barge.

Q. Is the crane shown in any of these pictures?

A. Yes.

Q. Which picture is that?

(Testimony of Andrew S. Freitas.)

A. Exhibit C-5. Exhibit C-6.

Judge Biggs: And Exhibit L-2.

A. Yes, sir.

Judge Biggs: And L-1 and L-3, as a matter of fact. A. Yes, sir. [352]

Q. (By Mr. Crockett): Did you learn the names of the two men who were working on top of the bin?

A. Yes. One was Jerome Harrington and the other was Johnson.

Q. You mentioned in your statement of this incident that those people who rushed forward mounted the bins. Are those bins which they mounted shown in either of these pictures? A. Yes.

Q. With relation to where the Supervisor Harrington and Johnson were working, which bin was it that the men mounted?

A. At the first or left on this picture marked—I believe it is—4574 on the side of this bin.

Judge Metzger: Identify it by the exhibit number.

A. Exhibit L-3.

Q. (By Mr. Crockett): That, then, was the same bin which Harrington and Johnson were working?

A. Yes, sir.

Q. I believe you testified that you saw Johnson jump off the bin? A. I did.

Q. Did you see what happened to Harrington?

A. No, I didn't.

Q. Then you mentioned about persons punch-

(Testimony of Andrew S. Freitas.)

ing or in the act or attitude of punching somebody. Was that on the same bin where Harrington had been working? A. Yes, sir. [353]

Q. Where is this crane that you said the crane operator was working; which picture is that shown on?

A. The good one would be on Exhibit L-1.

Q. Who was the operator?

A. Sonny Fernandes.

Q. He was the one you say jumped off the crane? A. That is right.

Q. Going back to the incident on top of the bins, when you saw persons striking or in the act of striking, did you identify any of those persons who were up on top of the bins at that time?

A. Yes.

Q. Who did you identify?

A. Diego Barbosa.

Q. When Sonny Fernandes was swimming in the water, I believe you testified that the persons were throwing pineapples into the water?

A. Yes, sir.

Q. Did any of them fall in the vicinity of or near where he was swimming?

A. Yes, sir.

Q. About how much does an ordinary pineapple weigh?

A. I am not an expert on pineapples. They vary, different sizes. I will say they run all the way from a pound up to about four or five pounds. They are much heavier than the ripe ones.

(Testimony of Andrew S. Freitas.)

Q. As to solidity, are they like tomatoes or fruits of [354] that type or are they more solid?

A. They are much more solid.

Q. Were there any other persons going into the water besides Fernandes? A. Yes.

Q. Who else? A. Charles Makees.

Q. (By Judge Biggs): Before we leave Fernandes. Did any of those pineapples hit Fernandes? A. No, sir.

Q. What was the other man's name—Makees?

A. Makees.

Q. (By Mr. Crockett): Makees. Where had he been working?

A. He had been working on the platform.

Q. By "platform" what do you refer to? Will you point out the platform in one of these pictures?

A. It is in Exhibit L-1. They built the platform for the men to stand on, to be able to work.

Judge Biggs: The witness points to a platform in the center of the picture. Platform and the runway between some crates and a truck, which contains crates, besides the crane, in Exhibit L-1.

Q. (By Mr. Crockett): I think you mentioned that Fernandes jumped from the crane onto the wharf and then down to a landing. Would you see if that can be pointed out on any of those pictures? [355]

Judge Biggs: It will show, I think, on Exhibit L-1.

A. It shows on Exhibit C-4 here.

(Testimony of Andrew S. Freitas.)

Q. (By Mr. Crockett): Will you describe it?

A. The regular part of the wharf is much higher; this thing is lower, to accommodate the "Manahu," which is a regular boat that goes back and forth from the Island of Lanai to Maui.

Q. The crane shown in that picture, is that the crane where Fernandes was working?

A. Yes, sir.

Q. Then he jumped from the upper portion of the wharf down to this lower landing; is that what you mean?

A. No. He went down a stairway. Fernandes, when he jumped from the——

Judge Biggs: Here. Take this. What is that?

Judge Metzger: Exhibit C-4.

Judge Biggs: Exhibit C-4.

A. We will take C-6. He jumped from the crane onto the dock, and then, as I say, he ran to my direction. I was near the edge of the dock, near the lower portion where the "Manahu" docks. He ran in that direction and went out to the wall and came back and down the stairway.

Q. (By Mr. Crockett): Does this picture you are referring to, Exhibit C-4, show where he jumped into the water? A. Yes, sir.

Q. Were any pineapples thrown in the direction of where Makees was swimming? [356]

A. They were thrown into the barge where these other men had run into.

Judge Biggs: The answer to the question is

(Testimony of Andrew S. Freitas.)

not plain. Were they thrownig pineapples at Makees, too?

A. From what I observed, I didn't see them throw any pineapples at Makees; he was away at the edge of the barge.

Q. (By Mr. Crockett): Were any men working on the barge then, at the same time this trouble started?

Judge Biggs: Just a minute, please.

Q. (By Judge Metzger): That crane shown on Exhibit C-4, is that the one Fernandes was on?

A. Yes.

Judge Biggs: Proceed, Mr. Crockett.

Q. (By Mr. Crockett): Were any men working on the barge at the time of this trouble?

A. Yes, sir.

Q. Can you tell us who they were?

A. They were two men; one was Pavao; I cannot recall the other individual's name. He is down here. Bill. I cannot think of his name now. Two of them were on the barge.

Q. What happened?

A. They just remained on the barge all the time. Just pineapples thrown at them.

Q. Who threw the pineapples? Who threw the pineapples at them? [357]

A. Then men on top of the bins.

Q. The men on top of the bins. I think at one time you said some persons were on top of the bins. Do you mean the supervisors or those who rushed up there after the supervisors?

(Testimony of Andrew S. Freitas.)

A. I mean the union men.

Q. Who broke open the bins, as shown in the pictures?

A. Several members of the union there.

Q. The pineapple which is strewn on the wharf there; who did that? A. The union men.

Q. With respect to Lanai in general, when did you go over there?

Judge Biggs: Are you changing incidents now?

Mr. Crockett: No. We are just going back to give the Court a little background.

Judge Biggs: I thought he arrived there about 3 o'clock.

Mr. Crockett: That is at the wharf. The point I have now is conditions generally on Lanai.

Q. (By Mr. Crockett): When did you go to Lanai from Maui?

A. This incident happened on the fourteenth; the fourteenth was on Wednesday. I went there on Monday, the twelfth.

Q. Monday, the twelfth.

Mr. Crockett: I think the witness has the days of the week mixed up.

Judge Biggs: They will appear on the calendar. He [358] said he went there on the preceding Monday.

Mr. Crockett: The twelfth was the date; he said the twelfth. This incident happened on the fourteenth.

Q. (By Mr. Crockett): Had there been any

(Testimony of Andrew S. Freitas.)

picketing in and around Lanai during the time after you arrived? A. Yes, sir.

Q. Where had the picketing taken place there?

A. At Lanai City proper.

Q. Describe the nature of the picketing at Lanai City.

A. When I first arrived there they were picketing across the street.

Q. About how many men were in the line?

A. They had four rows of men.

Q. Were they abreast?

A. They were abreast.

Q. Walking? A. Walking.

Q. Will you describe as to how they were walking; what lines were they taking?

A. They were walking from right to left on the street, back and forth.

Q. Were any arrests made at any time prior to the incident that took place at the wharf?

A. Yes.

Q. How many persons were arrested?

A. One individual was arrested for loitering on the street. [359] Another one was arrested for assault and battery.

Q. Were those two separate incidents or were they only one incident?

A. They were two separate incidents.

Q. While you were at Lanai did you receive a report in regard to an assault made upon some Hawaiian boys by the name of Kalua and Nahinu?

A. I did.

(Testimony of Andrew S. Freitas.)

Q. Was that investigated by the officers under your direction? A. Yes, sir.

Q. Do you recall who were arrested in regard to that incident?

A. Several union members were arrested.

Q. Persons whose names were charged in the case of Territory v. Makekau?

A. Makekau, yes.

Mr. Crockett: If the Court please, I think that concludes the Lanai incident. I will return to the Paia incident.

Judge Biggs: That concludes Lanai.

Q. (By Mr. Crockett): Do you recollect when the strike began on Maui, that is, the sugar strike in 1946? A. Yes.

Q. About what was the date of that?

A. October 16, 1946.

Q. I am not talking about the incident. When the strike [360] first began. The strike itself began.

A. September 1. I beg your pardon. September 1, 1946.

Q. Was there any picketing of the plantations on Maui between September 1, the beginning of the strike, and immediately preceding the incident at Paia? A. Yes, sir.

Q. What was the general nature or type of picketing that was conducted during that time?

A. You mean as to orderliness?

Q. No. How was it conducted? How many persons were engaged; whether it was in large numbers or groups.

(Testimony of Andrew S. Freitas.)

A. Around the office of the mill they were very small groups, ranging all the way from 18 to 20.

Q. Which mill do you mean; all the mills or any particular mill?

A. I am speaking about the Wailuku mill. And then they had one or two men spread out over the main highways or roads leading into the plantation.

Q. Were there any places during that period where long lines formed or any large numbers formed, large mass of pickets?

A. There was no mass picketing.

Q. You saw the pictures that were run after the Lanai pictures were run this morning, purporting to show Paia? A. Yes.

Q. Was that the type of picketing that was done in some [361] places?

A. That is the type of picketing I observed during the Paia incident and the next morning after it.

Q. Was there much picketing like that going on elsewhere through the County?

A. You mean prior to the Paia incident?

Q. Yes. Prior thereto. A. No, sir.

Q. Do you recall whether or not there was a line down somewhere near the Puunene store?

A. Yes.

Q. What was the nature of that?

A. They had in the neighborhood of thirty men there. The occasion of that was that they were a little peeved at some of the union men in the

(Testimony of Andrew S. Freitas.)

store who refused to contribute 75 per cent of their salary to the union.

Mrs. Bouslog: Just a moment. I move to strike that out. I see no relevancy.

Judge Biggs: I think it can be shown, the reasons for the picketing, but we have opened a very wide field, for the reason given by Mr. Freitas. Strike the answer. Ask the question again in a different form.

Mr. Crockett: Will the reporter repeat the question, please?

(The question was read by the reporter.)

Q. (By Judge Biggs): What was the nature of the picketing? [362]

A. Well, they were walking back and forth in front of the store.

Q. How many men were there?

A. There they had in the neighborhood of 25 to 30 men.

Q. The reason you believe that they were irritated was because of certain company employees who continued to work inside the store?

A. Yes, sir.

Judge Biggs: I think that covers it.

Q. (By Mr. Crockett): Were there any arrests made in connection with that picket line?

A. No, sir.

Q. Do you recall whether or not there were any incidents during that period where homes were picketed? A. Yes, sir.

(Testimony of Andrew S. Freitas.)

Q. How many reports of that nature were brought to your attention?

A. I would say in the neighborhood of six to eight reports.

Q. Were any arrests made in connection with any of those reports? A. No arrests.

Q. (By Judge Harris): No arrests?

A. No arrests.

Q. (By Mr. Crockett): In other words, were any persons ever arrested in the Wailuku and Paia plantations in connection with [363] the strike prior to the time of the so-called Paia incident?

A. No, sir.

Q. How about on the Lahaina side, did any incidents occur over there? A. Yes.

Q. Were any arrests made over there?

A. Yes, sir.

Q. What arrests were made over there, or what incident? First of all, what incident occurred over at Lahaina?

A. There was an assault and battery; a union—union men struck one of the supervisors there. Another incident where a union man was charged with malicious injury, where he is alleged to have closed the irrigation ditch. And the other one was for pulling the ignition wires or the distributor off of one of the supervisor's vehicles.

Q. The first matter that you referred to, assaulting the supervisor; how many persons were charged on that? A. Just one.

(Testimony of Andrew S. Freitas.)

Q. And in the malicious injury case, were any persons charged in that? A. Just one.

Q. The pulling of the wires out, were any persons charged on that?

A. I believe there were two in that particular incident.

Q. I believe there has been testimony in this case also with reference to an incident that occurred at Lahaina, where [364] Mac Yamauchi was charged with assault and battery. Did you investigate that matter or assist? A. I did.

Q. Did you question Mr. Yamauchi in that matter? A. I did.

Q. He has testified that he wasn't present when the actual assault took place. Was that brought to your attention? A. Yes, sir.

Q. What was the reason or upon what basis was it that he was charged with the other defendants?

A. Because members of the union made statements in his presence, statements that he had sent them down there to beat up the supervisors and to stop them from irrigating; that he had directed them in certain cars to go down there and do that. And Mr. Yamauchi admitted that and gave us a signed statement.

Q. As a result of that he was included with the other defendants in the warrants of arrest?

A. Yes, sir.

Q. So that between September first and the actual Paia incident, so far as you recollect, those were the only arrests that were made in connection with the strike? A. Yes.

(Testimony of Andrew S. Freitas.)

Q. So far as you recollect? A. Yes, sir.

Q. Now, was any report made to the department prior to, [365] that is, on or about October 16 or prior to October 16, with reference to men wanting to go through the picket line at the Paia Mill?

A. Prior to October 16?

Q. The evidence shows that this incident occurred on October 16. Was any report made to the police with reference to men desiring to go through the picket line prior to that incident?

A. I don't recall any report being made to the police.

Q. To refresh your memory, do you recall whether or not a report was made to the officer in charge of the Paia district that some men wanted to return to work?

A. You mentioned Lahaina. From Paia, yes.

Q. Pardon me. I restrict it to Paia. To whom was a report made, or who brought it to your attention?

A. Captain Henry Long of the Paia district.

Q. What is his official status at Paia?

A. He is district commander of the Makawao district.

Q. The Makawao district adjoins Wailuku?

A. That is right.

Mr. Crockett: The Court may wish to refer to the map to get the relation between Wailuku and Paia.

Judge Biggs: There are certain maps in evidence.

Mr. Crockett: For the information of the Court,

(Testimony of Andrew S. Freitas.)

referring to Defendants' Exhibit J-2, would you show the Court [366] where Wailuku is and where Paia is?

Judge Biggs: Does it appear on there; is it marked?

A. Yes. It shows the town of Wailuku.

Judge Biggs: The town of Wailuku is in the center of the left-hand center of the head of the island, about where the thumb joins the hand, so to speak. Very well.

Mr. Crockett: And Paia.

Judge Biggs: Where is Paia? Paia is shown on the north shore, at a distance—right here—at a distance of about seven or eight statute miles from Wailuku. What is that wavy line back of the shore line? Is that the railroad?

A. That is the road that goes all the way over to the Hana district.

Q. (By Mr. Crockett): As I understand it, then, you received a report from Captain Long concerning some men who wished to go through the line? A. That is right.

Q. As a result of receiving that report, what steps or what action did you take?

A. We went out the next morning with some extra men.

Q. By "extra men," what do you mean?

A. Extra police officers from the Wailuku district.

Q. That is, were they men specially sworn in as police officers, or were they regular police officers?

(Testimony of Andrew S. Freitas.)

A. They were regular police officers. [367]

Q. But stationed in the Wailuku district?

A. Yes.

Q. How many men are normally stationed in the Paia district? A. From 12 to 14 men.

Q. How many were taken from Wailuku district that morning? A. We took seven men.

Q. About what time did you arrive up at the mill?

A. We arrived at the mill about 6:45 a.m.

Q. Had you seen the picketing that had been conducted in the vicinity of the mill and the plantation prior to the 16th? A. No, I didn't.

Q. When you arrived there, then, this morning will you describe to the Court what you saw and what you observed at that particular time, in regard to picketing or men being gathered there?

A. Upon my arrival I observed—I noticed that the picket line started from the mauka tracks and went down through the makai tracks. That is where the post-office is located. But as you come from the Maukua tracks, going makai, there was a service station. There was a single line from the service station to the entrance leading to the mill, there were two columns, and from there on down to the makai tracks there was just one column. And about two or three minutes later the situation changed. They put on two more columns from the service station down to the entrance of the mill, which made four columns in front of the mill. [368]

(Testimony of Andrew S. Freitas.)

Q. This line, how was it moving?

A. It moved at a very slow pace.

Q. What was the situation with respect to the distance between the individual pickets?

A. I would say that they were ranging from 2 to 4 feet apart.

Q. You mean 2 to 4 feet between the men?

A. From one individual to the next individual.

Q. With respect to these different columns, how closely together were they?

A. They were about three feet apart.

Q. What was the nature of the crowd, as to orderliness?

A. Other than a few yells to certain "old-timers" passing by in trucks, they were very orderly.

Q. Did you see any of the persons named as defendants in the case of Territory vs. Kahalokula up there? A. Yes, sir.

Q. Which persons did you see?

A. I saw Mr. Kahalokula, Levy Kealoha, and Mr. Awana, Ben Kahawanui, Maile, and Mr. Dees and Honokahi.

Q. Did you have any occasion to talk to any of those men before the incident happened?

A. Yes. I walked up towards the service station, where Mr. Kealoha was standing. As I did that I motioned for Mr. Kealoha, Maile, Mr. Awana, Dees, Kahawanui, and Honokahi. [369]

Q. Prior to calling these men together had you

(Testimony of Andrew S. Freitas.)

received any report on arrival there from any police officer concerning any matters which you wished to take up? A. I did.

Q. Which officer was that?

A. Sergeant Andoza.

Q. Had he been there before you?

A. Yes, he had been there before I arrived.

Q. When these men gathered together, will you give us the conversation that took place between you and the several persons named?

A. I referred my conversations mostly to Mr. Kealoha. I told him that Sergeant Andoza had informed me that he wanted to know whether we were going to take the men across the picket line, and if we did that there would be violence, and that the police had better get their guns ready. Mr. Kealoha told me yes, and he was here to protect these men's jobs; he wasn't going to let anyone cross the line, police or no police. Mr. Kahalokula then spoke up and says, "That is right, Chief; there is going to be violence." I then told them if they behaved themselves, there wouldn't be any violence. We didn't come here expecting to break their strike; we came here to maintain law and order, and that if any of them committed a breach of the peace in our presence that we would make arrests.

Mr. Kealoha spoke up and stated, "If that is the case, then there is going to be bloodshed." [370]

Mr. Kahalokula says, "That is right, Chief; there is going to be violence."

(Testimony of Andrew S. Freitas.)

Then Mr. Kealoha asked me for permission to talk to those five non-union men that wanted to go to work. I gave him permission. We walked over to where these men were, and Mr. Kealoha told them it was foolish for them to try to cross the picket line, and that whatever he and the other members of the union were trying to do, they were trying to better conditions for the members of the union as well as non-union members.

Mr. Moniz, one of the non-striking men, told him, "The union promised him a raise," and asked "But what have they given him? Nothing. Who is going to support my wife and children?"

Mr. Kealoha then spoke to me and said, "Chief, you had better not take them across; there is going to be trouble."

Just then the whistle of the mill sounded and we started across the street.

Q. Now, before "We started across the street," the man you referred to as Kealoha, do you know whether or not he is an employee of the plantation?

A. He is not an employee of the plantation.

Q. Is he a resident of the County of Maui?

A. No, sir.

Q. Where did he come from?

A. He came from Honolulu. [371]

Q. How long had he been on Maui prior to this incident? A. He arrived the day previous.

(Testimony of Andrew S. Freitas.)

Q. The man you referred to as Ben Kahawanui, was he an employee of the plantation?

A. No, sir.

Q. Was he a resident of the Island of Maui?

A. No, sir.

Q. How long had he been on Maui prior to this incident?

A. He had arrived one or two days previous to the incident.

Q. At the time you had this conversation with them, do you recall whether or not either Kealoha or Kahalokula referred to his experience elsewhere in regard to strikes?

A. Yes, sir. Mr. Kealoha told me that he had been to the mainland and he had seen a lot of bloodshed.

Q. Do you recall whether anybody in the course of that conversation referred to trouble they had been in, in strikes elsewhere in the Territory?

A. Yes. Mr. Kahalokula told me that they had an incident in Hilo where several men got shot and some of them are still crippled. So I assured Mr. Kahalokula we wouldn't do any shooting, just so they obeyed the law.

Q. Did you have any gun with you?

A. No, sir.

Q. Now, we have got to the part where you say the whistle blew.

Mr. Crockett: Does the Court want to proceed or shall [372] we take a recess?

(Testimony of Andrew S. Freitas.)

Judge Biggs: How much longer will this witness' testimony take?

Mr. Crockett: At least a half hour, if the Court please. Probably longer.

Judge Biggs: Court will take a brief recess and will continue until 12:30. We will take our next recess at 12:30. We will now recess for about five minutes.

(A short recess was taken at 12:15 p.m.)

Judge Biggs: Proceed, Mr. Crockett.

Q. (By Mr. Crockett): Now, Mr. Freitas, we have covered most everything up to the time the whistle blew. What time was that?

A. It was at 7 o'clock.

Q. What whistle were you referring to?

A. The mill whistle.

Q. Prior to the blowing of the mill whistle had you seen or was your attention directed to any persons who wanted to go to work that morning?

A. Yes; they were standing alongside of me.

Q. Who were those persons?

A. They were two Souza brothers, Moniz, Kahalokula, a Filipino man that I don't recall his name.

Q. The indictment mentions a man by the name of Cordin. A. Cordin, yes.

Q. Had you talked to them at all that morning? [373] A. Before going over?

Q. Or at any time.

A. I talked to them after.

(Testimony of Andrew S. Freitas.)

Q. After going over? A. Yes.

Q. Then when the whistle blew, what happened then?

A. They started off with Captain Long and I followed and Kahalokula followed also. And we got across the street and all the men started converging at one point, they all started bunching up at the entrance to the mill there. When we got to the men Souza complained to Captain Long, he stated, "They won't let me go through." Captain Long said, "Where do you want to go through?"

He said, "Right here," to Awana.

Q. What Awana is that?

A. Awana is sitting in the court-room there, at the end chair.

Q. Referring to the one who was previously a witness in this case? A. Yes, sir.

Q. He is present in the court-room now?

A. Yes, sir.

Q. What happened after that? Proceed to give us what took place from that time on, without my interrupting you with questions. [374]

A. The Captain told Awana to "Open up. Let this man through."

When he said that, Awana braced himself and the men all started to push; they started to yell and push. They pushed us back about four or five feet, and I started to yell for them to stop. I told them, "Stop, boys. Don't lose your heads. Listen to me."

(Testimony of Andrew S. Freitas.)

And Joe Kahalokula spoke up and he said to them, "Listen to what the Chief has to say, boys." And that stopped everything.

Q. Proceed.

A. I then told them we were all police officers, we came over here expecting these boys to obey the law. That I had a book with me containing the Revised Laws, and I wanted to read to them that section on loitering, the law. So I read the section of the loitering law to the men. When I got through I told them that they were hindering these men's passage, for them to open up and let them go through. When I said that, why I heard Kealoha yell to the men and at the same time saw him start shoving, and everybody in front of me started to shove and push, and they pushed us over half way across the street, about 10 to 12 feet. I then yelled to them again to stop, not to lose their heads, because they were going to get into serious trouble, and that I would stop these men from going to work. So the struggle stopped. I then told [375] the non-union men to go back across the street. I told the police officers to go back also. I then told the union men, "All right now, these fellows are across the street. You go back where you were." So they went on back. I then went to where the non-union men were. I told them, I said, "Boys, we tried to take you across but you see how the crowd is. If you want to try again, I will try. I will try to take you across, but I don't assure you

(Testimony of Andrew S. Freitas.)

that I can take you across without any injury to you."

Q. Did you state "I do" or "I don't"?

A. "I cannot assure you that I can take you across without injury to you. We have 18 police officers here. We have in the crowd four or 500 men. What do you fellows want to do?"

Souza spoke up and he said, "No, no. They are mad. That is enough."

So I told the police officers to take these non-union men down to the police station, to get statements from them.

And Mr. Kahalokula came up to me, so I told him that I didn't appreciate his action, especially the statement he made during the demonstration, where I heard him remark to the men, "You remember what I told you last night, men." So I went on and said, "Joe, for a member of the legislature, for a man who makes the laws, I don't believe you used good judgment."

Joe spoke up and said, "What do you expect me to do? I represent these men. You don't expect me to sit back and not do anything?" Then he started to shout, he said, "I told [376] you not to try. Why do you want to be foolish? Why do you want to take these fellows across?"

So I told Joe it wasn't necessary for him to shout, I could hear him. I said, "I know you want to do the right thing for these boys. Come along. Let's have a cup of coffee." So I walked on.

(Testimony of Andrew S. Freitas.)

I looked back and Joe was following me. He said, "Chief, Paia is closed up. We will have to go up to the bakery." We started to walk up. He said, "No. I have my car. Let's ride up." So we both went up to the bakery there and had coffee. So I spoke to Joe and told him I thought they were very foolish for pulling that demonstration the way they did. Joe said, "Well, you can't help it, Chief. You saw the way the men acted. You cannot blame them."

I said, "Joe, I told you before we went through this thing that there would not be any violence." I said, "Look. I have no gun. I have no blackjack. If we had come out here to do any shooting or to have any violence, I certainly wouldn't have come this way."

So Joe spoke up and said, "I can see you have no gun or anything, Freitas. I want to compliment you. You really saved a lot of bloodshed over there. You did a good job. The men respect you. When you told them to stop, they stopped."

So after we had our coffee we went back. On the way back I told Joe he could pull off his picket line, that we wouldn't attempt to take anybody across. When we got there I went up to the union men and I told them I didn't know whether [377] they were bluffing, but if they were they certainly put on a good show. I also thanked them for listening to me, because otherwise some people would have got hurt. They seemed to be so elated

(Testimony of Andrew S. Freitas.)

over the fact that they started yelling and clapping, so I went back to the police station from there.

Judge Biggs: Would you have the witness identify what he means by "the loitering act." You may do that later. You may pick up the exhibit during the noon recess, Mr. Crockett.

Mr. Crockett: Yes, if the Court please, I will.

Judge Biggs: Will you do that, please?

Mr. Crockett: Yes, I will.

Q. (By Mr. Crockett): You mentioned that these men went back to the police station, that is, the non-union men went back to the police station?

A. Yes, sir.

Q. Were they able to go to work at any time that day? A. No, sir.

Q. Getting back again to the details, Mr. Freitas, showing you plaintiffs' exhibit No. 11, do you recall whether or not you read from a pamphlet similar to that, or did you have the original copy of the Revised Laws?

A. No; I had a little book that the police department—that the Territory prepared, that we use in the police school for new officers.

Q. Is that a reprint of the Revised Laws of Hawaii itself?

A. Yes. Just the criminal section of the Revised Laws of Hawaii. [378]

Judge Biggs: Can you identify it by section? We merely want to get it definitely in the record.

The Witness: I have forgotten how to pronounce

(Testimony of Andrew S. Freitas.)

his name—testified that the parts marked *and read* were read to him by Mr. Freitas. Perhaps it can be done in that way.

Q. (By Mr. Crockett): This exhibit which I have shown you shows at the top, section 11751, with the red line alongside, headed "Trespass." Did you read that section at that time?

A. No, sir.

Q. Then that same page also has section 11771, vagrants, and so forth. At the bottom of the same page, with also a red line, I ask you whether or not you read that section? Did you read that to them at that time?

A. I didn't read this section.

Q. Now, referring to the copy of the Revised Laws, to section 11773, entitled "Loitering. Penalty." I will ask you whether or not that is the section which you read?

A. Yes, sir; section 11773.

Q. And that was from a reprint of the Revised Laws? A. Yes, sir.

Q. Do you recall, with reference to this exhibit which I just handed you previously, Exhibit 11, do you know whether or not these were handed out by the police at any time or given to the strike leaders?

A. Those copies were made by the police department, mimeographed [379] copies; they were furnished members of the union as well as members of industry.

(Testimony of Andrew S. Freitas.)

Q. How does it happen that this does not contain the law with reference to loitering?

A. When we first made that we discovered that we omitted the section on loitering, so we included the loitering section; there is a very small sheet there just containing this section that we attached to this form.

Q. A half page or something?

A. I don't think it was that large; about a quarter, to be exact, a quarter page.

Q. That was added to what was given?

A. Yes, sir.

Q. With reference to this incident, was that before or after the incident, the handing out of these——

A. (Interrupting): Before the strike; before September 1.

Q. Immediately before this blowing of the whistle and before you started, before you had the conference with these men, how was this line marching? I believe you described it as marching four abreast.

Judge Biggs: I don't want to limit you, Mr. Crockett. This is one of your principal witnesses. But haven't you gone over that?

Mr. Crockett: I wish to connect it up, if the Court please, and to show the change in condition.

Judge Biggs: Very well.

Q. (By Mr. Crockett): You have already described how they were marching. Did they continue

(Testimony of Andrew S. Freitas.)

approximately up to the time of the whistle blowing or was there any change in their method of marching, at the particular time you came up to the time the whistle blew?

A. Up to the time that the whistle blew they were walking in four columns and as the whistle blew and we started, they all converged, and they were stationary until we arrived.

Q. And in the converging, in the mass that converged, about how large a mass was that?

A. I would say right to the entrance of the mill over there they had a little over 200 men.

Q. Showing you the pictures, then, which were taken——

Mr. Crockett: That we offered in evidence already, if the Court please.

Q. (Continuing): Would you look at these pictures, 1, 2, 3, 4, and 5 of Defendants' Exhibit A-1, and tell the Court the sequence in which these pictures were taken and what they severally represent, referring to No. 1 first, or give your own sequence, rather.

A. Exhibit A-1 shows them picketing about five or ten minutes prior to the whistle going off. The picture Exhibit A-2 shows the non-union men and the police officers going across the street. The picture Exhibit A-3 was after we had been pushed back the first time. [381]

Q. That was about four feet, I believe you testified.

(Testimony of Andrew S. Freitas.)

A. About four or five feet. Exhibit A-4 is when we had been pushed and I was reading the loitering section to them. Exhibit A-5 shows the finish of my reading this and asking the men to open up the lines.

Q. As a matter of fact, defendants' Exhibit A-5, how close was that to the second push to which you referred?

A. The push was just about over.

Q. Just about the end of the second push?

A. Second push, yes, sir.

Q. (By Judge Biggs): Mr. Freitas, look at Exhibit 4. How many men would you say were in that picture, just approximately?

A. Just the group in front of me, sir?

Q. Yes.

A. Oh, I would say in the neighborhood of about 100.

Q. Were there more out behind this tree to the right? A. Yes; both sides of it.

Q. Both sides of it? A. Yes.

Judge Biggs: Thank you.

Q. (By Mr. Crockett): Is that also true of the picture A-5? A. Yes.

Q. That more people are out of the view of the camera? A. Yes, sir.

Judge Biggs: I think we will have to suspend at this time. May I ask the question again: Without any indication [382] or desire that you limit the witness in his testimony, how much more time will

(Testimony of Andrew S. Freitas.)

we require on examination in chief? Merely on the length of the recess; it is pertinent to that issue only.

Mr. Crockett: I think now, in the Court please, we can say perhaps fifteen or twenty minutes more we can finish with this witness.

Judge Biggs: How many more witnesses do you have?

Mr. Crockett: I have two other witnesses, who will be very brief, covering the incident that occurred at Paia, just one incident.

Judge Biggs: Court will stand in recess until 2 o'clock.

(April 26, 1948, 12:35 p.m. A recess was taken until 2 p.m.) [383]

Afternoon Session
2:00 P.M., April 26, 1948

Pursuant to noon recess, the proceedings continued as follows:

ANDREW S. FREITAS

a witness called by and in behalf of the Defendants, having been previously sworn, was examined further as follows:

Direct Examination
(Continued)

By Mr. Crockett:

Q. Mr. Freitas, you mentioned that when the men

(Testimony of Andrew S. Freitas.)

started across something happened with regard to the picket line, and you mentioned Awana. You said he braced himself. Would you stand up, please, and show the Court how Awana did this?

A. Well, on the first occasion when Souza said he wanted to go through, Awana did it this way (indicating). He put his arms out that way (indicating).

Q. (By Judge Biggs): Put his arms on his breast? A. Arms on his breast.

Q. And his elbows out? A. Yes.

Q. (By Mr. Crockett): That was the first time?

A. The first time.

Q. And the next time when they tried to go through?

A. The second time Awana stretched his arms out.

Q. (By Judge Metzger): Did he hold them?

A. Yes. [384]

Q. (By Mr. Crockett): How close to Awana were the other men standing at that time?

A. Well, they weren't any more than a foot to 18 inches away from him.

Q. Would you say there was some space between the men? A. Between Awana and Souza?

Q. Well, I had in mind particularly the persons who were alongside or nearby Awana and the strikers.

A. The strikers were real close then. They had really bunched up.

(Testimony of Andrew S. Freitas.)

Q. Well, how close with reference to each other?

A. Well, some of them were right up to one another.

Q. Their shoulders?

A. Shoulder to shoulder.

Q. You testified that after this had occurred the men all separated. What happened after everything was all over and you went up to drink coffee with Kaholokula? Where did the men go?

A. When I got back the men were all around the entrance to the mill. There was quite a bunch there, I think, yet.

Q. Was there any picket line at that time?

A. No, they were just standing around talking.

Q. How about the next day? Were any picket lines formed the next day?

A. The next day when I went on up there they had all the men [385] on the makai tracks. When the seven o'clock whistle started they paraded on up and turned around and came on down and then came on up again. And so Ben Kahawanui was there and I asked him what they were doing. He says, "That is a parade." I said, "What do you mean? I thought a parade started one place and finished at another." He said, "That is the parade," so I watched them, and they finally disbanded.

Judge Biggs: The witness used the words "makai tracks."

The Witness: That is towards the sea.

Judge Biggs: What about the other tracks? You mean there were railroad tracks there?

(Testimony of Andrew S. Freitas.)

The Witness: Yes, running across the street.

Q. (By Mr. Crockett): Did any workers try to go across on that following morning?

A. No, sir.

Q. Was there any picketing from that time on until the end of the strike? A. In Paia proper?

Q. Yes, in Paia proper.

A. Well, an injunction was gotten out which limited their picketing. I believe it was three men to the entrance to the mill.

Q. Well, did they picket in that form, that is just three men at the entrances of those various places?

A. My observation was that there was just about three places that they were there.

Q. So far as you know, or so far as was reported to the police were there any more long lines of 200 or 300 men like they had on those occasions?

A. They had what they called this parade, but that went on for about five days after the incident. Every morning was this so-called parade.

Q. I see. Were there any arrests made in connection with the so-called parade? A. No, sir.

Q. Then so far as Paia was concerned that ended any police activity, that is so far as any arrests or charges made against anybody? A. Yes, sir.

Mr. Crockett: If the Court please, I believe that concludes our direct-examination of this witness.

Judge Metzger: I wanted to ask about this map. Puunene doesn't seem to be shown on the map. Puunene is one of the principal settlements in the big plantation mill operations.

(Testimony of Andrew S. Freitas.)

The Witness: That's right. No, the map does not show the Puunene.

Judge Metzger: The H.C.S. mill is there, isn't it?

The Witness: That's right. It is just beyond Kahului, sir. [387]

Judge Metzger: Further away?

The Witness: Further inland.

Mr. Crockett: If the Court please, I have here a map which I don't believe would be dignified enough to offer in evidence, but it shows a little more detail.

Mrs. Bouslog: We have no objection.

Judge Biggs: I would offer it anyway. Let it be offered and marked.

Mr. Crockett: It shows the places in more detail.

Judge Biggs: Exhibit M. Let me see it. I don't see Puunene. Yes, I see it. It is spelled P-u-u-n-e-n-e.

(Thereupon, the document referred to was marked Defendants' Exhibit "M" and was received in evidence.)

Judge Biggs: Cross-examine, please.

Cross-Examination

By Mrs. Bouslog:

Q. Mr. Freitas, how long have you known Diego Barbosa?

A. I don't know him personally, other than from seeing him on the island of Lanai.

(Testimony of Andrew S. Freitas.)

Q. You only know him by picture and by sight for a very short period of time, is that correct?

A. That's right.

Q. Now, isn't it a fact that at the time you started towards the men, started towards the pack, that you didn't have your eye on any one particular individual? [388]

A. I did have my eye on that particular individual.

Q. Now isn't it a fact that the men were all watching what was going on over in the cranes and not looking at any particular individual?

A. When you say "The men" who are you referring to?

Q. You say you were watching Barbosa, is that correct?

A. I was watching the men and Barbosa was out in front.

Q. You mean to say not a single man started to move before Barbosa, before you say Barbosa waved his arms? A. That's right.

Q. Everybody was completely motionless?

A. You mean motionless?

Q. I say they did not start to move at all?

A. Well, some of them were moving and some were stationary. They were just observing over there.

Q. Were they observing Barbosa or observing the crane from what you could tell by looking at them?

A. I didn't notice all of them as to what they

(Testimony of Andrew S. Freitas.)

were doing. Some of them were moving in the direction of the crane.

Q. Isn't it a fact that almost everybody there was watching the loading process and their attention was focused on the loading process?

A. Well, everybody,—You mean the union men or the spectators?

Q. The spectators; I don't know how you distinguish the spectators from the union men. What is your distinction? [389]

A. Well, what I might say, some disinterested parties, some school teachers and other individuals that were also there.

Q. Can you tell by looking at a person whether he is a union member?

A. Well, I know most of these other people there that teach school or are in business.

Q. Were there people there that you wouldn't be positively able to say whether they were union members or not union members?

A. Oh, I couldn't say all the people.

Q. You assumed everybody you didn't know who wasn't a police officer or who wasn't a company employee or who wasn't a school teacher was a union man, is that it?

A. I assumed the men on the picket line to be union members.

Q. Now you testified this morning that this incident lasted eight to ten minutes, is that correct?

A. I don't recall that question being propounded to me.

(Testimony of Andrew S. Freitas.)

Q. In the course of your testimony you said that it went on from about eight to ten minutes?

A. I don't remember.

Q. All right, how long did it go on?

A. From my observation, I don't think the thing lasted any more than five minutes.

Q. Isn't it a fact it didn't even last five minutes?

A. From my observation of it I would say it was five minutes. [390]

Q. Isn't it a fact that one of the three cameras placed in different angles covered every portion of the incident?

A. I only knew of two men taking pictures. I later learned there was another individual that had a movie camera?

Q. Do you know Mr. Bilson? A. Yes.

Q. Do you know Mr. Heminger?

A. Yes.

Q. Do you know Mr. De Mello? A. I do.

Q. Isn't it a fact that all three of them were taking pictures from different angles at all times?

A. Well, De Mello and Bilson were pretty close to one another, and now I later learned that Heminger was taking pictures. He was near the wall taking pictures from that direction.

Q. (By Judge Biggs): But you don't know that of your own knowledge?

A. That's right.

Q. (By Mrs. Bouslog): But the pictures that were shown this morning in toto cover the whole

(Testimony of Andrew S. Freitas.)

time of the incident from the time the men started across the line until the thing was completely finished, is that not correct?

A. No, it does not show anything about the Fernandes incident pictures.

Q. Mr. Freitas, I will have the Clerk repeat the question. [391] I don't believe you understood the question.

(The question was read by the reporter.)

Q. In other words, I am talking about the time, not whether everything is shown in the pictures, but whether or not these pictures do not run during the entire time of the incident. A. These pictures?

Q. Yes.

A. No, they do not run the entire time.

Q. Recalling the pictures, I believe the first ones that were shown were Mr. Bilson's pictures, and they started showing some of the men leaving the walls and going towards the bins. Was that the beginning of the incident?

A. You say the men leaving the walls?

Q. Some of the men seemed to be coming across the so-called "Kapu" line. Was that the beginning of the incident?

A. The beginning of the incident was Barbosa and another individual climbing up the ramp and onto the bin.

Q. That is the beginning of it. Mr. Bilson's pictures started. That was the beginning of the incident, is that correct? A. That's right.

(Testimony of Andrew S. Freitas.)

Q. And then Mr. Bilson's film, do you recall where Mr. Bilson's film ends?

A. No, I do not.

Q. I believe Mr. Bilson's film ends showing some people [392] standing including yourself, Mr. Freitas, I believe, standing down at the wharf's edge apparently looking towards the water. Now is that the end of the incident?

A. I don't recall the end of the incident, in the picture I am talking about.

Q. I am asking you if you recall whether everything was peaceful at the time you were standing down there with that group of men at the water's edge?

A. I only recall myself in the pictures twice, prior to the start of the incident and the next time I motioned my hands for them to go back.

Q. How were you dressed that day, Mr. Freitas, in uniform or plain clothes?

A. Plain clothes.

Q. Do you recall what kind of attire you had on? A. A tie?

Q. I say will you describe your clothing on that particular day?

A. I believe I had a coat on. If I didn't have a coat, I had a jacket. I had a top piece on, I am sure of that.

Q. At any rate, will you describe the last scene of the so-called incident? When the incident was all pau, where were you standing and what the men were doing?

(Testimony of Andrew S. Freitas.)

Mr. Crockett: If the Court please, I think that question is a little bit indefinite. I don't see how he can [393] identify, as counsel just stated, what the last scene was.

Judge Biggs: Perhaps the witness can identify it. We will overrule the objection.

Q. (By Mrs. Bouslog): That is, after everything was peaceful, what was the scene in your immediate surroundings?

A. Well, the men, some were sitting on the wall and some were down on the road.

Q. Where were you?

A. I was at the makai end of the dock.

Q. And were you down on the loading platform or up on the makai end of the wharf?

A. Of the wharf.

Q. That would be where you would be at the end, after the incident was all over? A. Yes.

Q. And if Mr. Bilson's film ends with a picture of that kind, Mr. Bilson's film represents the full period of the incident?

A. I tell you I don't recall.

Q. I say, assuming that is true, assuming his picture starts with the person you have identified as Barbosa climbing up on the bins and ends at a time when you are standing down at the makai end of the wharf with a group of men around you, that would be the whole span of the incident?

Mr. Crockett: To which we object.

Judge Biggs: Sustained. It isn't very clear. Try again, if you desire, Mrs. Bouslog. [394]

(Testimony of Andrew S. Freitas.)

Mrs. Bouslog: I think I will pass that question now, your Honor. I think that the witness has already testified what he was doing at the end. The pictures will speak for themselves.

Q. Do you know whether or not, or can you state whether or not pictures were taken at all times during the time while the incident was going on?

Mr. Crockett: If the Court please,——

Judge Biggs: If the witness knows he may answer. That is really the test.

A. I do not know.

Q. Now you personally swore out the complaints against Diego Barbosa and eleven men including Diego Barbosa, is that correct? A. Yes.

Q. And you personally swore out a complaint against 56 other men, the first offender of which was Aglian, is that correct?

A. Is that the Paia incident?

Q. No, this is still the harbor incident.

A. I may have. I don't recall about the 56 men. I remember the first incident; whatever the complaint says. If my signature is on it then I did.

Mrs. Bouslog: This, your Honors, is stipulated in evidence. It is part of the complaint.

Judge Biggs: Did you identify it? Are you referring [395] to the complaint?

Mrs. Bouslog: Yes.

Q. This is a complaint which shows "District Court of Lanai, and Andrew S. Freitas, being first duly sworn, says," and then you name 56,——

(Testimony of Andrew S. Freitas.)

A. It says I signed, Andrew S. Freitas; I did.

Q. Now what is your customary procedure when you swear out a complaint against an individual or a group of individuals as a police officer? What kind of investigation do you make before you swear out such a complaint?

A. Well, you mean in regards to all individuals?

Q. Yes.

A. Well, the men submit reports. They observe as to what certain individuals were doing and then we compile all those names and put it all in one complaint.

Q. Now the complaint form of procedure for a felony is a very unusual form of procedure in the Territory, is it not?

A. I don't know. A lot of the forms are already prepared. We don't prepare them ourselves.

Q. The usual procedure in respect to felonies is to take them before the grand jury, is that correct?

A. Yes, ma'am.

The complaint procedure under the Territorial law, to your knowledge as a police officer, is limited to those cases where it is felt to be a great and imminent danger that the person [396] will try to escape or that there is very convincing evidence of his guilt. Is that correct?

A. As far as his guilt, it isn't for me to determine. If I have enough information to show that we have evidence to substantiate what we say, then we include his name in the complaint.

(Testimony of Andrew S. Freitas.)

Q. Does the law require for you to state that this man has committed an offense and to swear to it under oath? A. It is sworn under oath.

Q. Does not the law require that it state that an offense has been committed by the particular individual? A. Yes, ma'am.

Q. And do you know of your own knowledge at this time how many people have been dropped from the complaint to which you swore on the first day of August? A. I do not.

Q. You know that a substantial number of them have been dropped? A. I do not.

Q. What did you base your information on in respect to the first eleven people and then the succeeding 56 people?

A. I can't say offhand, there is so many individuals. As I stated, I observed a few individuals and the other information was obtained from information or reports submitted by other officers or other witnesses present. [397]

Q. But you, at the time when you swore to this complaint, you did not have sufficient evidence to swear that each of these individuals had committed the offense, did you?

Mr. Crockett: To which we object, if the Court please. I submit, if the Court please, that that is not the duty of the police officer to wait until he has got sufficient evidence.

Judge Biggs: This is a matter of cross-examination, Mr. Crockett. We think the question is a proper one for that reason. Objection overruled.

(Testimony of Andrew S. Freitas.)

Q. Isn't it a fact, Mr. Freitas, that you swore out complaints against people who didn't exist, or persons, different persons, you gave them aliases which they do not have?

Judge Biggs: That question is not clear. Strike it and rephrase it, please.

Mrs. Bouslog: Will you read the question, please?

(The question was read by the reporter.)

Judge Biggs: It is not clear.

Mrs. Bouslog: I believe there was a question before that which the witness had not answered. Will you read it, please?

(The reporter reads back question at top of this page.)

Judge Biggs: Very well, we will have the answer to that question.

A. As far as I am concerned, we would have considerable [398] evidence. Otherwise, I would never have affixed my signature to this complaint.

Q. Now did you have either the testimony of an individual, or what form of identification did you have for these people at the time you signed the complaint?

Mr. Crockett: If the Court please, may I ask that question be reframed. Counsel is referring to testimony of what individuals? This witness wasn't in court. He was an investigating officer.

Mrs. Bouslog: Let me withdraw the question.

Q. What was the evidence on which you swore out the complaint?

(Testimony of Andrew S. Freitas.)

A. From my observation.

Q. Do you know a person by the name of Agliam? A. I do not.

Q. Do you know what evidence you had that he was present?

A. I have already testified that these people that are named over there, that that was information submitted to me by members of the department or other witnesses. What part they played I don't recall.

Q. In other words, if anybody came up and said, "I think so and so was down at the harbor," his name was added to the complaint?

A. I wouldn't just take that "so and so." It would have to come from a reliable source. [399]

Q. Do you know a person named Henry Aki?

A. No, I don't.

Q. Do you know whether or not he was dropped from the complaint? A. I do not.

Q. Did you know any of these individuals against whom you swore out this complaint? Will you take a look at the complaint and see if you knew any of them?

A. All during this time I went to a trip to the mainland, and I was gone nearly three months, so I don't know who was dropped off these complaints or not; if that will make it easier for you.

Q. I am asking you now if at the time you swore to this complaint that you knew a single individual whose name was on the complaint? Will you look at

(Testimony of Andrew S. Freitas.)

this complaint and see if you recognize any one of those 59 people?

A. Well, there is Abraham Makekau.

Q. How long have you known Abraham Makekau?

A. Just from observing him when I was there. From this list that is the only one that,——

Q. Whose name you recognize?

A. Yes, ma'am.

Q. Do you recall the names of any of the persons on the first complaint you swore out, the first ones who you alleged were the leaders? [400]

A. I haven't seen the complaint, so I don't know.

Q. Do you know a person by sight or by name named Shigeru Yagi? A. No, I do not.

Q. Isn't it a fact that the list of defendants was compiled including every union member who had been on the wharf either before or after the incident from pictures taken before the incident happened, during the incident and after the incident happened, including some pictures taken that morning? A. You mean the morning prior?

Q. The same morning of the incident.

A. There was no pictures taken the morning prior to the incident.

Q. I think the record will show they were shown.

Judge Biggs: You are losing track of the objective, at least what I assume to be your objective. Ask your question again and make it less complex.

Q. Isn't it a fact that the list of defendants in

(Testimony of Andrew S. Freitas.)

both of the cases growing out of the harbor incident were compiled on the basis of pictures which included pictures which were taken the morning of the incident, an hour preceding the incident, during the incident, and in the hour or two that followed the incident while pictures were being taken?

A. Let's take the morning first. There were no pictures taken by the police in the morning. [401]

Q. Did Lieutenant DeMello take any pictures in the morning?

A. No, ma'am, not at the dock. No pictures were taken at the dock in the morning. We were very busy with the union members up at Lanai City in the morning.

Q. You are positive about that?

A. Yes, ma'am.

Q. Were there any pictures taken before the incident occurred?

A. Oh, I would say pictures were started sometime after three in the afternoon. There were some pictures prior to the incident taken.

Q. That would be any time from sometime after three until about 4:30?

A. I arrived there at 3:05, and I would say maybe about 15 or 20 minutes later the pictures were being taken.

Q. Isn't it true that a large number of pictures were taken after everything was pau?

A. Yes, there were pictures taken afterwards.

Q. Isn't it a fact that a large group of people came down after everything was all over?

(Testimony of Andrew S. Freitas.)

A. I don't know.

Q. Did anybody come down?

A. I don't recall seeing anyone.

Q. Did you see a truck carrying 20 people come down after the incident?

A. I did not see any truck.

Q. Did you see two car loads of private individuals come [402] down after the thing was all over? A. No, ma'am.

Q. Isn't it a fact that all these pictures were used in compiling the list of names in this complaint?

A. Well, Mrs. Bouslog, I testified that these names were submitted and the men, and witnesses—

Judge Biggs: Let's have an answer to the question, a responsive answer, and you may explain afterwards. Read the question, please.

(The question was read by the reporter.)

Judge Biggs: Either they were or they weren't.

A. They were.

Q. Did you make the decision on the basis of the facts and on the basis of what you observed what the men were to be charged with?

A. Yes. Everything was prepared by the police and taken over to the County Attorney's office for our perusal.

Q. Before the warrants were filed?

A. That's right. I would like to correct myself. In that particular incident Mr. Crockett came over to Lanai right after the incident.

(Testimony of Andrew S. Freitas.)

Q. And he instructed you to make up the complaint to read unlawful assembly?

A. After he had checked the reports.

Q. And in respect to the Barbosa group, did your instructions [403] also come from him to charge unlawful assembly? A. Yes, ma'am.

Q. Now did you at any time immediately preceding or following the Lanai Harbor incident, consult with representatives of the office of the Attorney General?

A. I had a conversation with the attorney general. I don't recall. I am not sure whether it was the Paia incident or the Lanai incident, but I did have one consultation with him.

Q. By whom were you sent over to Lanai during the Pineapple dispute?

A. By the Chief of Police.

Q. Mr. Lane? A. Yes, ma'am.

Q. And what day did you testify this morning you went over there?

A. I believe it was on a Monday, two or three days prior.

Judge Biggs: You recall there was a little question as to the date that the witness stated he went Monday preceding. He stated that was the 12th. Apparently that did not correspond with the calendar. Are you able to throw any light on that now?

The Witness: I would say, your Honor, I don't think I was there more than three days prior to the incident.

(Testimony of Andrew S. Freitas.)

Judge Biggs: It might have been the 13th for example?

The Witness: Yes, sir. [404]

Q. (By Mrs. Bouslog): How long were you over there after the 15th?

A. After the 15th, let's see. I remember we had reinforcements from the Hilo police department, so I went back to Maui about the third or fourth day after the incident.

Q. Is it not a fact, Mr. Freitas, that the pineapple strike ended on the 15th of July?

A. I don't recall the date, but I know it ended, let's see,—If I recall correctly the Hilo police department arrived the following day after the incident, and I think that same night about midnight we were informed that the strike would be called off in the morning, so I don't think it was more than a day and a half after the incident.

Q. That is the riot squad from Hilo that you are referring to? A. If they call it that.

Q. Were you present while the riot squad drilled before the employers on the common in Lanai City?

A. I don't recall any drill.

Q. Did they parade up and down in front of the common? A. They did not parade.

Q. Did they form formations?

A. No, they were just stationed down by the motor pool at different intervals.

Q. You don't recall any formations that were made out on the common? [405]

(Testimony of Andrew S. Freitas.)

A. I don't recall any formations.

Q. Where did you stay while you were on Lanai? A. I stayed at the boarding house.

Q. And what is the boarding house?

A. Well, it is a place you board and stay. There is one hotel there that is about the only place you can stay.

Q. You mean the clubhouse up on the hill?

A. That's right.

Q. Also known as snob hill, is that correct?

A. Yes, I have often heard it called snob hill.

Q. By whom is that boarding house owned?

A. Hawaiian Pineapple Company.

Q. It is a kind of clubhouse and they have a bar? A. No, no bar.

Q. There is a place to get food?

A. Yes, ma'am.

Q. Were all the other officers staying at this clubhouse? Including the Hilo police department?

A. No, they had some discarded army buildings back of the hospital and most of the members of the Hilo Police Department stayed there.

Q. How about the three officers from Maui, were they all staying at the clubhouse while you were there? A. Yes.

Judge Biggs: Mrs. Bouslog, aren't you getting a [406] little far afield?

Mrs. Bouslog: I think that is the end of that line of questions, your Honor.

Judge Biggs: Very well.

(Testimony of Andrew S. Freitas.)

Q. Mr. Freitas, as assistant chief of police when you arrest persons for investigation before you question them, do you advise them of what their constitutional rights are about incriminating themselves? A. No, I do not.

Q. Do you instruct your officers to do that?

A. The only time we instruct them is just concerning military prisoners to comply with the court martial regulations.

Q. In other words, you never tell a person that you pick up and hold under the 48 hour statute that he has a right not to answer questions?

A. Well, we never do because the Supreme Court has rendered a decision already.

Q. What Supreme Court?

A. The Territorial Supreme Court in the case of the Territory vs. Miles Yutaka Fukinaga.

Q. Is it not a fact that police officers are taught not to advise people of their rights if they do not know them already?

A. They are not taught. They are informed that it is not necessary.

Q. From your knowledge of the working people in the Hawaiian [407] Islands, Mr. Freitas, would you say that many of them are aware what their constitutional rights are?

A. I can't answer that question.

Q. From your experience as an officer in Maui County for the last three years, do you think that the average working man in the Territory knows

(Testimony of Andrew S. Freitas.)

that when he is arrested by a police officer he has a right not to answer questions which will incriminate him?

A. I already answered that I don't know.

Q. What would your answer be from your own observation?

A. There would be a certain percentage that wouldn't understand it.

Q. Very few of them?

A. I wouldn't say very few. It all depends what group we are dealing with.

Q. You testified this morning that you interviewed MacYamauchi during the sugar strike at Lanaina and that you got from him a signed statement that he ordered a group of pickets to beat up a group of men? A. Yes, ma'am.

Q. May I see that statement?

A. Yes, ma'am.

Judge Biggs: Do you have that with you?

The Witness: I beg your pardon; no, I haven't got that. That is in the Lahaina incident. I haven't got it here. [408] That is filed at the police department on Maui.

Q. Can you produce it? A. Yes.

Q. Will you produce it, Mr. Freitas? Can you make arrangements to produce it?

A. Yes, ma'am.

Judge Biggs: When do you want it produced?

Mrs. Bouslog: As soon as he can get it, your Honor.

(Testimony of Andrew S. Freitas.)

Judge Biggs: How long would it take you to get it, Mr. Freitas?

The Witness: I can call, your Honor. As a matter of fact, if someone would call now, there is a possibility,——

Judge Biggs: If someone called now they could mail it over?

The Witness: Your Honor, I would like,—I can't speak for the chief of police. Under the law you would have to get a subpoena out to subpoena the records from the police department.

Judge Biggs: What were you going to say, Mr. Crockett?

Mr. Crockett: I was just considering the matter of time. If we can telephone up, it would be down here by tomorrow morning by ten.

Judge Biggs: Why don't you make the telephone call and get the statement here and have it tomorrow morning. Is [409] there any reason why that shouldn't be done now?

Mrs. Bouslog: We would like an opportunity to inspect it, and if relevant put a copy of it into the records of the Court.

Judge Biggs: I am wondering, you are calling for its production and as soon as it is produced it is in evidence, isn't it?

Mrs. Bouslog: Well, as I understand, we are calling for it to examine it.

Judge Biggs: At any rate you have called for it.

Mrs. Bouslog: Yes.

(Testimony of Andrew S. Freitas.)

Judge Biggs: The defendants say they will produce it, or will have it brought here, and when it is brought here we will resolve the question as to admissibility when it gets here.

Q. At the time of the Paia incident, Mr. Freitas, did you know Nils Tavares? A. Yes.

Judge Biggs: I didn't get that name.

Mrs. Bouslog: Nils Tavares.

Q. What position in the Territory did he hold at that time?

A. He was the Attorney General.

Q. Do you personally know what he does now?

A. I think he is in private law practice now.

Q. With what firm? [410]

A. Oh, let's see, that is Cassidy,——

Judge Biggs: What is the point of that?

Mrs. Bouslog: We will connect it up, your Honor.

Judge Biggs: All right, go ahead.

Q. Did you personally speak to Mr. Tavares shortly after the Paia incident?

A. I already stated I don't recall whether it was the Paia incident or whether it was the Lanai incident.

Miss Lewis: If the Court please, I think counsel will stipulate that Mr. Tavares' term of office ended as of June 30, 1947.

Mrs. Bouslog: That is correct. This is during the Paia incident in 1946 that we are now talking about.

(Testimony of Andrew S. Freitas.)

Judge Biggs: Very well.

Q. Isn't it a fact that Mr. Tavares flew over to Maui a couple of days after the so-called Paia incident?

A. He may have, but I don't recall seeing Mr. Tavares on Maui.

Q. Who instructed you to convert your investigation from one of loitering to an unlawful assembly and riot charge?

A. I told you that a report was submitted to the County Attorney's office for their perusal.

Q. We are talking about Paia.

A. Yes, Paia, the same procedure.

Q. And is it not a fact that your original investigation [411] dealt with violations of the loitering law?

A. Yes, I talked to the men. That was my idea of charging them under that section.

Q. And no other intentions were formed until several days later?

A. There is no intentions on my part, Mrs. Bouslog.

Q. You swore to the complaint? A. Yes.

Q. And that was on what day? Do you recall the date?

A. It was three days after the incident.

Q. Three days after the incident?

A. Yes.

Q. Now as a police officer in the course of your duty you make a written report of what happens

(Testimony of Andrew S. Freitas.)

when you as a police officer are present, do you not?

A. Yes, ma'am.

Q. Did you make a written report of the Paia incident after it happened? A. Yes, ma'am.

Q. Did you use that report to refresh your memory? A. You mean before coming here?

Q. Yes. A. Yes, ma'am.

Q. Will you produce a copy of that report? Can you produce a copy of that report? [412]

A. It is attached to the record. It could be produced.

Q. Do you know whether or not it is here in the courtroom?

A. It is not in the courtroom. I believe Mr. Crockett has a copy of it.

Mr. Crockett: If the Court please, I object to producing the records and files of our office. I submit, if the Court please, that is entirely out of order that counsel has a right to cross-examine this witness on anything she wishes.

Judge Biggs: How far do you propose to go with the production of records, Mrs. Bouslog, on cross-examination?

Mrs. Bouslog: Well, your Honor, Mr. Freitas testified at great length this morning from memory about this incident. He made a report at the time when it occurred. It seems that having used it to refresh his memory, certainly counsel is entitled for the purpose of cross-examination to examine the memorandum.

(Testimony of Andrew S. Freitas.)

Judge Biggs: He did testify as to one report that he had used to refresh his recollection. That question was admitted without objection. The answer to that question was admitted without objection. The matter can be pursued too far. Mrs. Bouslog, we are not trying the criminal charges. We do not propose to try them here. That is not our function. We think, however, Mr. Crockett, that Mrs. Bouslog is entitled to the report to which the witness referred when he said he refreshed his recollection. Your objection therefore is overruled.

The court will recess for five minutes.

(Recess.)

Q. (By Mrs. Bouslog): Do you recall telling Mr. Kaholokula at the time that you were glad that nothing serious had occurred? A. Yes.

Q. Do you recall telling him that you thought four or five of the boys would be arrested for violation of the loitering law? A. I did.

Q. Do you recall Mr. Kaholokula saying to you, "Why don't you arrest them all"? A. Yes.

Q. And do you recall what your reply was?

A. That we would make a test case out of the loitering law.

Q. That you would make a test case out of the loitering law? A. Yes, ma'am.

Q. Do you know a person by the name of Lionel Hanakaki? A. Yes.

Q. Of your own knowledge do you know whether he was charged with unlawful assembly and riot?

(Testimony of Andrew S. Freitas.)

A. He was.

Q. Do you recall any conversations you had with Lionel Hanakaki at or about the time of the incident?

A. He told me something about his father seeking office and [414] he didn't want to do anything to hurt his father's chances, or words to that effect.

Q. Did he say anything about wanting just an opportunity to talk to the men before they crossed the picket line?

A. You reading something that happened the day before?

Q. I am reading only from one report that is headed "Strike" and it begins at 10 a.m., October 15th, and then on the same page at six a.m., October 16th. That is the time of the incident?

A. Yes.

Mr. Crockett: If the Court please, 10 a.m., October 15th is the day before the incident.

Judge Biggs: What counsel states is not evidence.

Mr. Crockett: Yes.

Q. (By Mrs. Bouslog): And this ends with the signature Andrew S. Freitas 10/16/46 at three p.m.

A. That's right.

Q. Mr. Freitas, what further recollection do you have of what you said to or what transpired between you and Mr. Hanakaki?

A. What day are you talking about?

Q. October 16th, the date of the incident.

(Testimony of Andrew S. Freitas.)

A. I just got through saying something about his father seeking office and he didn't want to do anything that would hurt his father's chances of getting elected, or something [415] like that. It is in the report. You read it to me.

Judge Biggs: We are not going to put the report in evidence so that you may test the witness' recollection of it.

Q. (By Mrs. Bouslog): Did this conversation take place?

Judge Biggs: No, don't read it. How far do you propose to pursue this report, Mrs. Bouslog?

Mrs. Bouslog: I am almost through, your Honor.

Judge Biggs: How long is the portion you propose to read?

Mrs. Bouslog: Four or five lines.

Judge Biggs: All right, you may read it.

Q. (Reading): "Lionel Hanakaki said, 'I am a Molokai boy and my father is running for the House and I don't want to do anything that might hurt him in any way' ". That is what you testified to, is that correct? A. Yes, ma'am.

Q. Do you recall your reply to Hanakaki?

A. I don't recall.

Q. Did you reply to him that all you were interested in was keeping them clean and obeying the law and that there would be no trouble?

A. If the report says so, I did say that.

Judge Biggs: We want your recollection.

A. Now that my memory has been refreshed, your Honor, I did say it. [416]

(Testimony of Andrew S. Freitas.)

Judge Biggs: Very well.

Q. Isn't it a fact that the decision to change the Paia incident from loitering to the felony of unlawful assembly and riot was made after you spoke to the Attorney General? A. No, ma'am.

Q. Now during your testimony on direct examination, you reported a conversation that you had with one of the persons, strikebreakers who wanted to go through the lines having to do with the union failing to furnish rice. Do you recall that?

A. Yes.

Q. Do you know, of your own knowledge, whether or not there was a rice famine in the Territory during the sugar strike?

A. Well, I got all the rice I wanted. I don't know if there was a famine. I know that periods during the war there was a shortage, but whether there was a shortage at that particular time I do not know.

Q. Did not this man also say that he was tired of cabbages and carrots?

A. That he told me that?

Q. Yes, at the same time he mentioned the rice.

A. No, I don't recall him making such a statement.

Q. Is it not true, Mr. Freitas, that on or about the 45th day of the sugar strike, about the 15th and 16th, the employers in the sugar industry were trying to start a back to work movement? [417]

A. I have no knowledge of that.

(Testimony of Andrew S. Freitas.)

Q. Mr. Freitas, at the time during September, 1946, who were the members of the police commission on Maui?

A. There was Mr. Hasi, Asa Baldwin, William Tuttle, Frank Caires. Let's see, there is five. I believe Mr. Rice was on there, Oscar Rice.

Judge Biggs: Are you able to refresh your recollection by some means?

Miss Lewis: I have a list of the police commission on Maui during 1946 and 1947.

Judge Biggs: Let's have it introduced. Let it be marked, please, as Plaintiffs' Exhibit 28.

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 28 and received in evidence.)

PLAINTIFF'S EXHIBIT No. 28

Maui Police Commission as Constituted During the Calendar Years of 1946 and 1947

Baldwin, Asa; Caires, Frank; Hussey, Thomas K.; Rice, Harold F.; Tuttle, William P.

Admitted.

Q. (By Mrs. Bouslog): Who was the chairman of the commission at that time, Mr. Freitas?

A. It isn't clear in my mind. I know Mr. Baldwin went out. He was chairman. Then they sort of alternated between Tuttle and Asa Baldwin. Who

(Testimony of Andrew S. Freitas.)

was chairman at the time of the strike I don't know, whether Tuttle or Baldwin.

Q. Does the police commission on Maui generally supervise and direct the work of the police department for Maui County on policy matters?

A. They set the policy of the department, yes, ma'am.

Q. At the time in September, 1946, is it not a fact that Mr. Asa Baldwin who was on the police commission, was the same [418] person who was manager of the Maui Agriculture Company where the Paia incident occurred? A. Yes, ma'am.

Q. Did you receive any instructions from the police commission in respect to this incident?

A. No, ma'am.

Q. Did you have any conversation with Mr. Baldwin about the mass picketing at Paia?

A. You mean the Paia incident?

Q. About mass picketing at Paia?

A. No, ma'am.

Q. Did you have a conversation with him about the breaking up of mass picketing and the back to work movement?

A. I don't recall having any conversation with Mr. Baldwin.

Q. In the course of the recess has your memory in any way been refreshed about when you talked with Mr. Tavares, whether it was during the Lanai or during the pineapple dispute or during the sugar dispute? A. I don't recall.

(Testimony of Andrew S. Freitas.)

Q. Well, at the time when you did have the conversation with him, whether it was the pineapple or sugar, do you recall what was said?

A. If I recall, my meeting there with the Attorney General, Mr. Crockett was over there, and if my memory serves me right, you came in the room and I listened to you people go over that.

Q. Is it not true that you made a trip to Honolulu in connection with the drafting of the indictment, the 1946 indictment regarding the Paia incident? A. No, ma'am.

Q. You were not present at the time when Mr. Fairbanks, Mr. Crockett and Mr. Tavares prepared the indictment?

A. Mr. Fairbanks? No, my only visit I recall was Mr. Crockett to Mr. Tavares and myself. I don't remember Mr. Fairbanks at all.

Q. I show you a picture, Mr. Freitas, which is an exhibit in Equity 325, Maui Agriculture Company vs. International Longshoremen's and Warehousemen's Union.

Judge Biggs: Equity in what court?

Mrs. Bouslog: Second Circuit Court of the Territory.

Q. Can you tell by examining that picture whether it was taken on the morning of the Paia incident? A. Yes.

Q. Can you tell? Have you seen it before?

A. I may have. I don't recall this picture.

Q. Are you present in this picture?

(Testimony of Andrew S. Freitas.)

A. Yes.

Q. Which is you? A. (Witness points.)

Q. Do you know what this officer is doing standing here writing, what he is writing? [420]

A. No, I do not.

Q. In the immediate foreground of the picture on the left-hand side, the man smiling and sitting there beside two other people, can you identify that man?

A. Yes, he is one of the non-union men.

Q. He is one of the people who are charged as being terrified in this complaint, is that correct?

A. Yes, ma'am.

Q. Can you place the time of this picture as before or afterwards or during the so-called incident?

A. No, I am not able to state whether it was before or after.

Q. It could be either?

A. Could be either way, yes.

Mrs. Bouslog: I would like to offer this picture. I will have to make it subject to the same ruling.

Judge Biggs: Very well. Has opposing counsel seen it?

Mrs. Bouslog: Yes, he has seen it.

Judge Biggs: It is the record of another Court, and therefore you will have to substitute a copy for it.

Mrs. Bouslog: That is correct, your Honor.

Judge Biggs: Let it be marked subject to the

(Testimony of Andrew S. Freitas.)

same ruling and subject to the motion to strike as to relevancy, Plaintiffs' Exhibit 29.

(Thereupon, the document referred to was marked Plaintiffs' Exhibit No. 29 and received in evidence.) [421]

Q. What is the name of the person who is shown in the left lower, in the left foreground of the picture?

A. I think it shows Souza and Kaholokula.

Q. Those are two of the five people who tried to go through the line that morning?

A. Yes, ma'am.

Mrs. Bouslog: No further questions.

Judge Biggs: Redirect?

Mr. Crockett: Yes, if the Court please.

Redirect Examination

By Mr. Crockett:

Q. Mr. Freitas, who is the present chairman of the police commission? A. Mr. Oscar Rice.

Q. Isn't it a fact that he was the one who was chairman during the year previously, that is, in 1946 and 1947?

A. 1947 he was. 1946, as I testified, I am not sure.

Judge Biggs: If the fact be pertinent, certainly the parties will stipulate as to that.

Q. You said a while ago you talked to them on loitering. Was that before the incident or after the incident?

(Testimony of Andrew S. Freitas.)

A. During the incident there was one conversation where I read it, and the second conversation with Kaholokula when he and I were having coffee.

Q. After the incident was over, did you talk about charging [422] them with loitering again?

A. Mr. Kaholokula?

Q. Well, with anybody?

A. With Mr. Kaholokula, yes.

Q. Counsel asked you with regard to the practice of swearing out complaints in the county of Maui and asked you if a person who commits a serious felony is not usually taken before the grand jury. Did you understand that question?

A. Well, they are given a preliminary hearing first.

Q. Isn't it a fact that the general practice is that a warrant is sworn out and then they are taken before the district magistrate for preliminary hearing and then committed by the district magistrate to await action by the grand jury?

A. Yes, sir; that is the proper procedure.

Q. And that complaint is usually preliminary to a warrant of arrest, is it not? A. Yes, sir.

Q. About how often do we have sessions of the grand jury in our circuit?

A. Sometimes we have one in 60 days. Sometimes in six months; it all depends on the amount of cases there.

Q. Average about every three months?

A. We have been averaging about every three months.

(Testimony of Andrew S. Freitas.)

Q. You stated that the police commission set the policies for the police department. [423]

A. Yes.

Q. What do you mean by setting the policies of the police department?

A. That is the rules and regulations. The chief of police runs the police department. They set the policy by setting the regulations.

Q. Are they charged with the,—Do they have anything to do with the employment or hiring of individual officers? A. No, sir.

Q. They fix the regulations governing the hiring of the officers? A. Yes, sir.

Q. Do they have anything to do with the suspension or dismissal of the officers?

A. The Commissioners?

Q. Yes.

A. No, sir, that is usually handled by the personnel officer with the civil service commission.

Q. Do they have anything to do in case of an appeal by the men for action taken by the chief?

A. Under civil service regulations.

Q. Under the regulations in general?

A. We are governed by the civil service regulations, that if they are dismissed then they have ten days to note an appeal before the civil service commission. [424]

Q. Do they serve on a full time basis, the police commission?

(Testimony of Andrew S. Freitas.)

A. Will you please clarify that? You mean work every day or just meet once in awhile?

Q. Yes, are they paid on a full-time basis every day or do they just meet occasionally?

Judge Biggs: Mr. Crockett, aren't you getting pretty far afield?

Mr. Crockett: Well, if the Court please, what I had in mind, counsel has referred to the fact that the manager of the M. A. Company was on this commission, and she left the Court hanging in mid air by the question that they set the policy.

Judge Biggs: I assume that the police commissioners do set the policy for the police department, don't they? Otherwise they wouldn't be police commissioners.

Mr. Crockett: I think the situation is different from what it is back in the mainland where a police commissioner serves on a full-time basis.

Judge Biggs: I see, you are bringing out the fact that they serve on a temporary basis. Do they receive pay?

The Witness: No, sir.

Judge Biggs: How often do they meet?

The Witness: Once a month.

Judge Biggs: How long are the meetings?

The Witness: It all depends on what business they have. [425]

Q. (By Mr. Crockett): How long would they average, Mr. Freitas?

A. Sometimes they are there 20 minutes, and

(Testimony of Andrew S. Freitas.)

sometimes they have a lot of bills to approve, so it is a little longer, but I don't think they meet longer than an hour and one-half at any one time.

Mr. Crockett: That is all, if the Court please.

Recross-Examination

By Mrs. Bouslog:

Q. Mr. Freitas, aren't the people of Maui County by and large a very law-abiding people?

A. They are. That's why they call it "Maui no ka oe".

Judge Biggs: What is that?

The Witness: "Maui no ka oe": Maui the best of all.

Mrs. Bouslog: No further questions.

Judge Biggs: That's all and thank you.

(The witness was excused.)

Miss Lewis: Mrs. Bouslog, you asked me about the chairmanship of the police commission. At that time the law did not provide for the governor to appoint a chairman so his records did not show it and we therefore called the police commission on Maui and ascertained that Mr. Rice was chairman during the year 1946 and 1947. Do you want to stipulate that?

Mrs. Bouslog: I will stipulate on your information.

Judge Biggs: So stipulated. [426]

Miss Lewis: Just a minute now, I don't want to be wrong about this.

Mrs. Bouslog: We will stipulate to the effect whatever the stipulation is to be.

Judge Biggs: Very well, proceed, please.

Mr. Crockett: Captain Long.

HENRY K. LONG, JR.

called as a witness by and in behalf of the defendants, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Crockett:

Q. State your name, please?

A. Henry K. Long, Jr.

Q. Where do you live, Mr. Long?

A. At present at Loawai.

Q. What is your official position with the County of Maui?

A. Captain of police district, Makawao.

Q. How long have you been connected with the police department of Maui County?

A. It will be 13 years the 15th of next month.

Q. How long have you lived in the county of Maui? A. I was born and raised there.

Q. Were any others in your family ever connected with the police department before you joined the police force?

A. My father was on the police department.

Q. About how long did he serve? [427]

A. About 25 years.

(Testimony of Henry K. Long, Jr.)

Q. Now what portion of the county work do you have charge of? A. The Makawao district.

Q. Does that include the town of Paia?

A. Yes, it does.

Q. During the period immediately after the beginning of the strike and up to about October 15th, the time when we had this incident, what picketing, if any, was conducted in your district?

A. During the sugar strike?

Q. Yes, during the sugar strike.

A. Picketing started on September 1st, the morning of September 1st. There wasn't too many pickets in the picket line. The number varied according to, I think, the number of men they could get out in the picket lines. In the beginning they had quite a few men. Then it started to drop off.

Q. When you say "Quite a few", about how many were there?

A. They had from about 30 to 50 men.

Q. Were there any definite lines formed at any places at the beginning?

A. At the beginning there was a line formed from the entrance to the M. A. Company all the way up to the road that leads on the mauka track.

Q. Did this picket line usually keep moving or was it stationary? [428]

A. They kept moving, and it was mostly a single line up to the entrance of the sugar mill.

Q. And about how close together did they march or walk?

(Testimony of Henry K. Long, Jr.)

A. Well, the distance varied from an arm's length to about 5 feet.

Q. Did that form of picketing continue very long after the start?

A. You mean for a month or two months after the strike started?

Q. Well, how long did they continue to picket in that manner from the beginning? I am talking about the first part of the strike.

A. I can't recall. The number started to drop down after the strike lengthened. After two or three weeks the number of men in the picket line started to drop.

Q. Isn't it a fact that shortly after the beginning of the strike it dwindled down to only be about three or four standing post, you might say, at certain fixed places?

Mrs. Bouslog: Your Honor, I would ask the question be stricken and rephrased as leading. He is actually testifying for the witness.

Judge Biggs: The question is leading, but I think we will allow that question in that form. Overruled.

Mr. Crockett: Will you read the question, please?

(The question was read by the reporter.)

A. Yes, that is correct.

Q. Now during that period were there any occasions to arrest or any complaints made by anyone about any violations of any of the laws?

(Testimony of Henry K. Long, Jr.)

A. No.

Q. Was there any other picketing conducted by the strikers during that period?

A. The picketing at the different camps, the main entrances to the different camps.

Q. Were those by lines, or were they just by fixed posts?

A. Some were fixed posts; some were lines.

Q. Was there any picketing around or near the homes of any of the workers?

A. There was picketing at the workers' homes.

Q. How many incidents of that nature were reported to the police?

A. I recall two incidents.

Q. Were any arrests made on account of any of those incidents? A. No, no arrests made.

Q. Now did you see the pictures which were shown this morning, particularly referring to the colored pictures shown by the plaintiffs? Did you see those pictures? A. Yes, I did.

Q. Were you able to recognize where that took place? A. Yes, I did. [430]

Q. What was that a picture of, from your recognition?

A. Part of that was the picket line on Baldwin Avenue in the vicinity of the M. A. Company mill entrance, and part of it was a parade that they had.

Q. Well, referring particularly to the picket line then, was that prior to the incident or was that during the incident, from what you observed?

(Testimony of Henry K. Long, Jr.)

A. That I can't recall.

Q. Did that picture showing the picket line, was that a fairly correct picture of how the picketing was generally conducted? A. Yes.

Q. Now on or about the 15th of October, did you receive, or did your office receive any report or request from any persons in regard to going back to work? A. I received that report.

Q. When did you first receive the report?

A. As I recall it was about 7:15 on September 15th.

Q. (By Judge Biggs): Morning or evening?

A. In the morning.

Q. (By Mr. Crockett): Well, I think the evidence shows the incident occurred in October.

A. October 15th.

Q. Whereabouts were you when you received that request?

A. I was standing on the highway across the entrance from [431] the M. A. Mill. I have been in the habit of, since the strike, to get down there and observe things in the morning, and I usually take a post right at the highway.

Q. Who came to you with that request?

A. A William Moniz.

Q. Is he one of the persons named in that incident? A. Yes, sir.

Q. What was the nature of his request at that time?

A. He approached me about 7:15 and stated that

(Testimony of Henry K. Long, Jr.)

he wanted to go back to work. I told him if he wanted to go, go ahead and "I will follow you across the highway. When you get to the picket line ask them to let you through". He started to walk across the highway and I followed him. He got to the picket line before I did and they wouldn't let him through. I then called Lionel Hanakaki and Nakada and Ben Awana who were there at the time. I told them that the man requested that we let him through the line, we helped him through the line, to help him to get to work, and if the line wouldn't allow him through, it would constitute a violation; they were just as much responsible for the men's action, at which time Lionel Hanakaki asked if he could talk to Willie Moniz. I told him it was his privilege. He then took Willie Moniz a little on the side and talked to him, and Willie Moniz stated in a loud voice, he said, "O.K., I am going home now, but I am coming back to work tomorrow." [432]

Q. Did you report that to your superior, Mr. Freitas? A. I did.

Q. Did any other incident occur at that time, or did Moniz leave and go?

A. Moniz turned around, crossed the highway and went home.

Q. Now you stated that Moniz first approached you on what we might say the office side of the highway. Is that where you were standing?

A. Yes, on the Hana side of Baldwin Avenue.

Q. That would be the lefthand side going up?

(Testimony of Henry K. Long, Jr.)

A. Yes.

Q. For the information of the Court, Baldwin Avenue is the name given the road between the office of the M. A. Company on one side and the mill on the opposite side, and it is also the place where this incident occurred, is it not? A. Yes.

Q. Now how were the pickets marching, or what were they doing at the time when Moniz first approached you? What was the nature of their picketing? Were they walking picketing in the manner in which you have already described, or was it different from that?

A. At the time Moniz approached me, or just prior to Moniz approaching me, the picketing was being done in a very orderly manner. There was just one double line that was walking in a circle right in the entrance of the M. A. Company mill.

Q. Then when you went across the road with Moniz, what did the picket line do at that time?

A. The picket line stood still and stood shoulder to shoulder facing the highway, and pickets from the mauka side of the Paia Store service station got down to where these men were standing in front of the entrance and increased the number there.

Q. And about to what size would you say the number was increased to?

A. They increased it to about 150 men.

Q. Now you say then you came back the next morning, on the 16th? A. Yes, I did.

Q. What time did you arrive that morning?

(Testimony of Henry K. Long, Jr.)

A. I first arrived at five o'clock in the morning, and I stayed till about 5:30 and went down to the station, and I came back up at about 6:45.

Q. About how many people were there, that is, with reference to the strikers, when you came back at 6:45?

A. The number had increased from the previous day. It was close to maybe between 300 and 400 people.

Q. Did they have a line formed at that time?

A. They had a line formed at that time.

Q. When you arrived back there, directing your attention then to what you found about 6:45, how was the line moving or acting [434] at that time?

A. When I arrived back there at 6:45, the line was very orderly.

Q. About how far did it extend?

A. From the mauka tracks to the service station there was a single line, and a double line in front of the entrance to the M. A. Company mill, and below, from the entrance to the makai tracks, a single line.

Q. Just for the information of the Court to get a better picture, when you speak of "mauka tracks" what are those tracks for?

A. Those are the M. A. Company railroad tracks that lead back into the yard, cane yard.

Judge Biggs: From the wharf to the yard?

The Witness: No, sir, from the fields.

Judge Biggs: From the fields to the yard.

(Testimony of Henry K. Long, Jr.)

Q. Then it is on this they haul their cane?

A. Yes.

Q. The makai tracks, what tracks are those?

A. There are two sets of tracks. One set is used by the Kahului Railroad Company, and it is the main line, and there is a siding there that runs into the sugar warehouse of the mill.

Q. It all belongs to Kahului Railroad?

A. I believe so. [435]

Q. That is where they haul the sugar back down to Kahului? A. I believe so.

Q. All right now, Moniz on the day before had told you that he was coming back on this morning, you have just testified. Did he come back?

A. Yes, he came back. I saw him there.

Q. Were there any others with him who wanted to go back to work that morning?

A. Yes, there were.

Q. Who else was with him?

A. Nelson Souza and William Kaholokula and William Souza.

Q. Did you talk to any of them that morning?

A. Nelson Souza approached me that morning.

Q. What did he say at that time?

A. He said he wanted to go back to work, but that he was going to wait because there were some other boys coming.

Q. Did any more come up?

A. The only persons I recognized after he spoke to me that came up was William Kaholokula and Willie Moniz.

(Testimony of Henry K. Long, Jr.)

Q. Now will you go ahead from that point on after they arrived and tell the Court just exactly what happened from then on as you recall it.

A. After he told me that he was going to wait until the rest of the boys came, I stood back outside of the highway, off the sidewalk on the highway on the Hana side of Baldwin Avenue. [436] When the whistle blew, Nelson Souza approached me and he says, "I am ready to go to work". I told him, "You go ahead and get to the picket line and ask them to let you through, and I will follow you". So he started across the highway. I stood right by his side, on his right side, and walked up to the picket line. When we got to the picket line, the picket line wouldn't give. The picket line then had increased. The pickets on the mauka side of the service station and on the makai side of the serkice station started to converge down to the entrance of the mill. They were standing shoulder to shoulder facing the highway. When we got to the picket line they wouldn't let him through. I asked him, "Where do you want to go through?" He said, "Through here; through Awana". He motioned with his hand, "Through here; through Awana".

Q. That is, the person directly opposite where he pointed was Awana?

A. The person directly opposite where he was in front of the picket line.

Q. Is Awana present here now?

(Testimony of Henry K. Long, Jr.)

A. Yes, he is sitting in the first row, the fifth person from the left.

Q. What happened then?

A. When he did that, then Awana made a motion to brace himself in the line by lifting up his elbows.

Q. Stand up and show the Court how he did that. [437]

A. He did this in the line (indicating).

Mr. Crockett: The witness indicates, if the Court please, that both fists were clenched, elbows out and the fists opposite on his breast, arms not crossing.

A. And at the same time from where I stood it seemed like the crowd, the pickets that came from both ends of the entrance had got in the back and started pushing, at which time the front line was pushed right up onto myself and Moniz and we were pushed back about a foot, two feet back. In the meantime, I noticed assistant chief Freitas coming in on my right side and asking the crowd there to stop, to listen to him. I could also hear and see Joe Kaholokula and Lionel Hanakaki trying to quiet the crowd there.

Q. Proceed.

A. The Chief then started to read the loitering law from a book that is put out by the department for police instructions, and as soon as he got through reading the loitering law I could hear Joe Kaholokula. He was standing directly in front of

(Testimony of Henry K. Long, Jr.)

me and a little to the right, and he said, "Don't forget, boys. Don't forget to do what I told you, boys". When he got through saying that the whole front of that line started to move down onto us and forced us right back onto the highway.

Q. And then what happened?

A. While they were pushing us across the highway, forcing [438] us across the highway, the assistant chief Freitas then said, "Keep a cool head, boys. Let's get back on the other side of the road". So I moved back across the other side of the road. In the meantime, those boys that wanted to go to work must have, on the initial push, got them back across the highway, because when I turned around I could not see them.

Q. Did anything further happen?

A. The pickets went back to their side of the highway and the officers and the men that wanted to go back to work were standing on the Hana side of the highway. I came back and stood in the highway, the position I was in prior to crossing the highway. The non-union men, or the men that wanted to go back to work were taken down to the station and I stayed at the scene for a few minutes and then went back down to the station.

Q. Now, after this incident on the 16th, were there any other picketing by the strikers in the Paia district? A. Yes, there was.

Q. What kind of picketing occurred after that?

A. It was picketing similar to when the strike first began.

(Testimony of Henry K. Long, Jr.)

Q. And how long did it continue like that?

A. Until the injunction was served.

Q. Except for this incident were any other arrests or charges brought by the police, so far as you know? A. No, sir; I don't recall.

Q. Now who first appointed you as a police officer? [439] A. Sheriff Crowell.

Q. Have you any idea how long Sheriff Crowell was on the police force? How long was he sheriff?

A. About 20 or 25 years.

Q. And prior to that he had been on the police force before that? A. The sheriff?

Q. Yes. A. Prior to that he was a clerk.

Q. And his total service with the police department was about how long?

A. About 35 years.

Q. In your experience as a police officer, Mr. Long, have you ever known of any occasion or any occurrence within the County of Maui which would suggest that a charge of riot or unlawful assembly should be brought against the participants on such occasions?

Mrs. Bouslog: Your Honor, I am going to object to the question as calling for a conclusion of the witness on a question which an expert opinion is called for.

Judge Biggs: We will overrule the objection and receive the answer for what it may be worth.

A. No, I don't know of any.

(Testimony of Henry K. Long, Jr.)

Q. Have you ever heard of anything from any other persons?

Judge Biggs: I think you have pursued it as far as [440] you are entitled to pursue that line.

Mr. Crockett: My question at that time was in his own experience.

Judge Biggs: Now you are asking him to testify as to the experience and recollection of others.

Mr. Crockett: Well, as a matter of reputation in the community.

Judge Biggs: We are not trying Maui County here. We have no power to try a county and don't propose to. Do you object?

Mrs. Bouslog: Yes.

Judge Biggs: Objection sustained.

Mr. Crockett: That's all, if the Court please.

Cross-Examination

By Mrs. Bouslog:

Q. Mr. Long, isn't it a fact that Joseph Kaholokula is the one who urged all the people to listen very carefully to what chief Freitas said when he was talking and reading the statute?

A. Yes, he was one of the men that tried to get them to quiet down so they could hear,——

Q. He said, "Listen carefully"?

Judge Biggs: Will you let the witness complete his answer?

Mrs. Bouslog: Sorry, your Honor.

Q. Did you complete your answer, Mr. Long?

A. I said that, yes, he was one of the men that

(Testimony of Henry K. Long, Jr.)

tried to get the picketers to quiet down so that they could hear the chief.

Q. No one was injured in any way, shape or form at Paia on that day?

A. No, sir; no, ma'am.

Q. Did you ever have any Legion conventions in Maui?

Judge Biggs: Is the question, "Do you ever have any Legion conventions in Maui?" Are we going to go into the American Legion?

Mrs. Bouslog: We are talking about tumult and violence.

Judge Biggs: Do I hear an objection?

Mr. Crockett: Yes.

Judge Biggs: Sustained.

Mrs. Bouslog: No further questions.

Mr. Crockett: That's all.

Judge Biggs: That is all, thank you.

(The witness was excused.)

Judge Biggs: We will take five minutes' recess.

(Recess.) [442]

JOHN E. SEABURY

called as a witness for the defendants, being duly sworn, testified as follows:

Direct Examination

By Mr. Crockett:

Q. Will you state your name.

(Testimony of John E. Seabury.)

A. John E. Seabury.

Q. Where do you live, Mr. Seabury?

A. In Wailuku, Maui.

Q. Are you a member of the county police of Maui County? A. What is that?

Q. Are you a member of the police force of Maui County? A. That's right.

Q. And in what capacity do you serve?

A. Detective division; captain in charge of the detective division.

Q. You are with the detective division. How long have you been in the detective division?

A. The past ten years.

Q. How long in the police force?

A. That is 20 years; starting out in 1928.

Q. How long did you live in the island of Maui?

A. I lived here since 1916.

Q. Now did you go to the island of Lanai in connection with the pineapple strike in July of 1947? [443] A. I did.

Q. Was the report which was made concerning incident that occurred in which two Hawaiian boys, one by the name of Kalua and one by the name of Nahinu, had been assaulted; was that referred to you for investigation? A. Yes, sir.

Q. Do you recall whether you questioned Abraham Makekau in the course of that investigation?

A. I did.

Q. Where did you question him?

A. He was questioned at the Lahaina police station,—I mean the Lanai police station.

(Testimony of John E. Seabury.)

Q. How soon after the incident?

A. About ten o'clock that morning.

Q. And when did the trouble occur?

A. Somewhere around 5:30 that particular morning.

Q. On July 15th? A. July 15th, 1947.

Q. Who was present at the time when you questioned him?

A. C. T. Moriyama. He was taking notes when I did the questioning.

Q. And by taking notes, were they in longhand or in shorthand? A. Shorthand.

Q. And did he afterwards transcribe his notes?

A. He did.

Q. Did you examine the transcription to see whether or not they corresponded to the questions you gave him and the answers as given by Makekau? A. Yes.

Q. Do you have the transcript with you at the present time? A. I have, sir.

Q. Will you refer to the notes as transcribed by Moriyama and see whether or not you asked the questions——

Judge Biggs:' Now, Mr. Crockett, if you are going to use this to refresh the witness' recollection, and you have the transcript available, why not see if there is an objection to the transcript.

Have you any objection, Mrs. Bouslog, to the transcript?

(Testimony of John E. Seabury.)

Mrs. Bouslog: I have not examined it, your Honor.

Judge Biggs: Well, let Mrs. Bouslog examine it.

Mrs. Bouslog: Is the original here?

Mr. Crockett: Yes.

Judge Biggs: Is the original signed?

Mrs. Bouslog: Oh, this is not a signed statement.

Mr. Crockett: No, if the Court please, this is not a signed statement. We do not say it is signed.

Mrs. Bouslog: We object to it on that ground, that it does not purport to be a statement signed, and the statement [445] does not indicate whether that is his statement, or that it is what he said.

Judge Biggs: I think you will have to proceed by way of refreshment of recollection.

Q. Mr. Seabury, what was said by Mr. Makekau?

Mrs. Bouslog: We will stipulate that if the witness testifies and is asked these questions, that he would answer them in this way.

Judge Biggs: Would that be of any assistance?

Mr. Crockett: Yes, if the Court please. In other words, if counsel would permit it we would be glad to offer the statement in evidence. The original is with the records of the police department, if the Court please, and I was not aware that this was going to come up.

Judge Biggs: Mrs. Bouslog's offer goes only to this, that she will stipulate that the witness will testify in accordance with this statement?

(Testimony of John E. Seabury.)

Mr. Crockett: Yes, that is o.k.

Judge Biggs: Very well, then; let the statement be admitted subject to that condition.

It will be Defendants' Exhibit "N."

(Document offered is received and marked: Defendants' Exhibit "N.")

DEFENDANTS' EXHIBIT N

Riot
7-15-47

Freitas, Andrew S.
Wailuku, Maui

Page 1 of Pages

Statement received from: Abraham Makekau by Captain J. D. Seabury in Lt. Medeiros' Office, Lanai Police Station on Tuesday, July 15, 1947, starting at 10:04 a.m.

Present: Abraham Makekau, Captain J. D. Seabury, T. Murayama.

Recorded in shorthand and transcribed by: T. Murayama.

* * *

Captain Seabury questioning Abraham Makekau:

Q. What is your full and correct name?

A. Abraham Makekau.

Q. Are you known by any other names?

A. That's all, for short they call me Abe.

Q. How old are you? A. Twenty-five.

Q. Are you married? A. Yes.

Q. Where do you live?

(Testimony of John E. Seabury.)

A. Block 20, House No. 4.

Q. Are you employed? A. Yes.

Q. By whom? A. Hawaiian Pine.

Q. As what? A. Painter and truck driver.

Q. How long have you been employed by this company? A. Seven months.

Q. You belong to any union?

A. Yes, I.L.W.U.

Q. And at present you are on strike?

A. Yes.

32-33-34

Statement of Abraham Makekau—

Page 2 of Pages

Q. Where were you this morning between five and six?

A. Five and six I went down with the mob.

Q. With about how many men?

A. About twenty-five men.

Q. To where?

A. I went down this Block 33 and then the fight went on.

Q. Whose house you went to?

A. I don't know whose house.

Q. You admit you went down to Kalua's place, is that right? A. That's right.

Q. What happened when you got there?

A. Had a riot.

Q. What do you mean by riot? A. Fight.

Q. Where did this fight take place, inside or outside?

(Testimony of John E. Seabury.)

A. When I was there was going on outside.

Q. Back or front? A. In the back.

Q. Who were they fighting with?

A. I guess fighting with the two brothers.

Q. When you say two brothers, you mean Samuel Kalua and Jacob Nahinu? A. Yes.

Q. Do you know as to whether they are employed by Hawaiian Pine?

A. Probably drivers, I don't know.

Q. But you know they work? A. Yes.

Q. As what? A. Truck driver.

Q. You know whether they belong to the union?

A. I don't know.

Q. I thought you said that they took some of the union boys' jobs?

A. I didn't say union boys' job, they took our job, they took our job lots of guys.

Q. When you got down to this particular house they started fighting in the rear of the house?

A. I saw them fighting.

Q. Who were present in the fight?

A. That I don't know.

34-35-36

Statement of Abraham Makekau—

Page 3 of Pages

Q. I thought you said Mendes was there?

A. Mendes was there but I didn't see him fight.

Q. You said big boy was there?

A. I saw him there but he didn't fight.

Q. Who was doing the fighting?

(Testimony of John E. Seabury.)

A. Lots of guys but I don't know them.

Q. You folks first met where this morning?

A. When I reached down there they said some guys went down so I went down.

Q. Who said that?

A. Some Filipino, some guys came from picket.

Q. You know their names? A. No.

Q. You walked down with about twnty-five men?

A. When I went down I had the guys in front of me.

Q. What was the purpose of going down to this particular house?

A. I don't know the purpose was, probably to tell the guys not to work.

Q. Did you go into the yard?

A. I went in the yard.

Q. How far in? A. Little ways in.

Q. When you go in the yard you noticed Tony Mendes there?

A. On the way I saw Tony Mendes in the yard.

Q. Where did you see Take?

A. I don't know him. I never see him, I don't know what guy.

Q. You know Mariano and Elpidio?

A. I know Mariano, big boy, by looks.

Q. Was he present with you?

A. That I don't know, I came through the back, I never see them.

Q. You witness this group was beating these two brothers? A. The fight was going on.

(Testimony of John E. Seabury.)

Q. The purpose of you going there was to tell this two brothers not to go to work?

A. Yes, that's the main purpose, because they were working.

36-37-38
Statement of Abraham Makekau—
Page 4 of Pages

Q. You mention the fact that they are taking the jobs of the strikers?

A. Not the strikers, there's lots of guys ahead of them but they can't get them, but these two just came in and got the job, but we have to go pick up pineapple first, and don't make sense, and I went down to tell them not to go work because trouble may come up, because I know Sam well, and he knows me too, we use to work together.

Q. Did you at any time strike Sam or his brother Nahinu?

A. I never, probably he saw me there, but I never strike him.

Q. And you want to say that while the fight was going on you were standing by looking?

A. Maybe I was trying to get in but too many guys.

Q. What you mean by trying to get in?

A. Get in and help the strikers but they had him already.

Q. Could you identify any of them that beat up these two brothers?

(Testimony of John E. Seabury.)

A. That I don't know but when they got through and he said he got enough and I guess he saw me.

Q. Who said "I got enough"?

A. I guess Sam's brother.

Q. You noticed as to whether Jacob was bleeding or not? A. He was bleeding.

Q. Where?

A. I don't know, around the face.

Concluded July 15, 1947, at 10:20 a.m.

I have read the foregoing 4 pages of this statement and have had the opportunity to make corrections thereon. I know the contents thereof to be true and correct to the best of my knowledge and belief.

.....

Witnessed by: .....

Admitted.

Q. Mr. Seabury, from your experience as a police officer in the County of Maui, will you state whether or not there has [446] been any incident on which the charge of riot and unlawful assembly should have been offered or made against the person involved in such incident?

Judge Biggs: Same objection?

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: We will receive it for what it is worth. I don't think it is worth very much, Mr. Crockett, anyway, and he is not a qualified member of the bar, but we will receive it and overrule the

(Testimony of John E. Seabury.)

objection. I say "we don't," but I am speaking for myself, I guess. I do not consider it worth very much.

Q. Will you answer the question.

(Last question read by reporter.)

A. No.

Cross-Examination

By Mrs. Bouslog:

Q. Did you make the entire investigation, of the so-called Makekau incident, the Kalua incident?

A. I questioned about four or five of them.

Q. Did you speak to the Kalua brothers before talking to any of the union boys?

A. Yes, I talked to the Kalua brothers.

Q. When did you first see either of the Kalua brothers?

A. I saw Samuel Kalua that particular morning at the police station, and later saw his brother Jacob after he was treated [447] by the doctor.

Q. You saw Jacob. Sam had no visible injuries, is that correct? A. Sam, yes.

Q. And Jacob you saw after he had been to the hospital?

A. That's right; he was bandaged.

Q. Did you send him to the hospital?

A. I did not.

Q. Who did, do you know? A. No.

Q. Do you know whether any police officer sent him to the hospital?

A. I believe some police officer took him to the hospital for treatment.

(Testimony of John E. Seabury.)

Q. Did you request that the picture of Sam be taken? A. No, Madam.

Q. You saw Sam at the police station, is that correct? A. That's right.

Q. And Jacob after he got out of the hospital?

A. That's correct.

Q. And how long had you known the Kalua brothers?

A. Just that particular morning,—Pardon me—I will take that back. A couple of mornings before the incident.

Q. You had talked to them?

A. No, not talked to them. I saw them. [448]

Q. You saw them? A. Yes.

Q. Under what circumstances did you see them?

A. I believe I saw them driving a truck.

Q. Driving a truck. In other words, they were working during the strike?

A. That's right.

Q. Do you know how long they had been on Lanai? A. I don't.

Q. When you spoke to Makekau what did you tell him, before you started to question him?

A. I asked him in the presence of Jacob, the fact that he heard the statement of Jacob,—Jacob's statement was made in his presence, and I asked him if he had been down to Jacob's home and he admitted going down to the home on that particular morning.

Q. He said he had been down to Jacob's home that morning? A. Yes.

(Testimony of John E. Seabury.)

Q. Who took down the questions and answers, did you say?

A. Officer T. Moriyama, who is a clerk.

Q. Were they taken in shorthand or how were they taken? A. That's right, shorthand.

Q. Did you tell Mr. Makekau that he had a constitutional right not to answer the questions you were asking him? A. I did not. [449]

Q. Did you tell him he had a right to consult a lawyer before answering the questions?

A. I did not.

Q. Did you tell him that he was a local boy and that he ought to tell you who all had been down there that morning?

A. No, Madam, I don't recall asking him that. I don't recall.

Q. Isn't it a fact that he kept telling you that he had nothing to do with the assault on the Kalua boys; that he came down there afterwards?

A. He didn't tell me that.

Q. Isn't it a fact that you kept telling him that he was lying and that unless he told you who all was down there you would send him to jail for 20 years?

A. No, I did not.

Q. Isn't it a fact that Mr. Makekau told you at the time that he had taken no part in the attack on the Kalua brothers? A. That's right.

Q. He said that he had gone down there?

A. He said he had gone down there; he attempted to help the strikers, that they were in a

(Testimony of John E. Seabury.)

scuffle, and beaten up, but he could not identify the men. He stated that he had gone down there with 25 men, 25 of them; estimated about 25 men.

Q. There are a considerable number of conflicts in this statement, are there not? [450]

A. I don't think so.

Judge Biggs: The statement will speak for itself, unless you are laying the basis of some contradiction of the witness, Mrs. Bouslog.

Mrs. Bouslog: Yes, that's true.

Q. Mr. Makekau told you that he went down to warn the Kalua brothers that some of the boys were sore because they were scabbing, isn't that correct?

A. No, sir, he did not.

Q. Did Mr. Makekau say to you that he went down to tell the guys not to work?

A. Yes, he did. He said he went down to tell them not to work, because they were taking the jobs away from men that had worked from the bottom up, almost from picking pineapple, and these boys came in to take their jobs, and what he meant, I don't know.

Q. Didn't he say that he never at any time struck Sam, and didn't know who did?

A. He did not strike Sam, he said, and he went in to attempt to help the strikers, but he never had a chance to.

Judge Biggs: Have you any further witnesses?

Mr. Crockett: I have none, if the Court please.

Judge Biggs: Or any redirect?

(Testimony of John E. Seabury.)

Mr. Crockett: No redirect.

(Witness excused.) [451]

Judge Biggs: Have you any further witnesses?

Miss Lewis: I have a small matter to clean up, about this Oahu incident, but maybe we could get a stipulation and we would not have to call a witness.

Mrs. Bouslog: We would be very glad to try to work out a stipulation.

Miss Lewis: I think the record on that is not clear, and I would like the record to show that the matter in which Mr. Sibolboro was involved was an incident at K-I road in the vicinity of Wahiawa, on the morning of July 13, 1947, and there was another incident involving about 83 men and——

Mrs. Bouslog: And one woman.

Miss Lewis: Well, let's say about 83 persons, at Turner's Switch, near Wahiawa, in the afternoon, and that that is the same incident that is involved in the case called Territory vs. Duz, and I propose to produce the information in that case for the purpose of showing that as far as the Attorney General is concerned he has brought that incident before Judge Moore for his consideration, as to whether it was a contempt.

Judge Biggs: Are you able to stipulate?

Mrs. Bouslog: I cannot stipulate that Mr. Sibolboro was arrested, as appears in the record, or was arrested in a separate incident, from that of the other 83 persons, but [452] I can also stipulate that

83 persons were arrested and were charged, and that their cases were later nolle prossed because there was no evidence of any activity of any kind or——

Judge Biggs: Just a moment, please. What counsel say is not evidence.

Miss Lewis: Yes, your Honor.

Mrs. Bouslog: So that the cases involving those 83 people, as far as any criminal charges were concerned, were dropped. Now in the case of the Territory vs. Duz, the Attorney General's office has appointed a special deputy prosecutor to prosecute a small portion of that number, of 83 persons, for summary contempt of court, for violation of a restraining order limiting picketing.

Judge Biggs: Well, I am afraid you are too far apart to stipulate, aren't you?

Miss Lewis: Yes, I am afraid so.

Mrs. Bouslog: I don't think we are very far apart.

Miss Lewis: I thought we went too far afield, and I made my objection before.

Judge Biggs: Yes, I think you did. Call your witness, and let's see where we are.

NEAL DONAHUE

called as a witness for the defendants, being duly sworn, testified as follows: [453]

Direct Examination

By Miss Lewis:

Q. Will you state your name for the record?

A. Neal Donahue.

Q. Are you a member of the police force of the Honolulu Police Department?

A. That's right.

Q. What is your position there?

A. At the present time I am assigned as temporary captain of the Vice Division.

Q. Now were you on duty in the vicinity of Wahiawa on July 13, 1947?

A. That is correct.

Q. And do you recall an incident involving Nicholas Sibolboro? A. I do.

Q. At what place did that occur?

A. At the road that is known as K-1, leading to Robinson Camp, leading to the pineapple fields.

Q. What time of the day was it?

A. Shortly before noon; about 11:30 in the morning.

Q. Now do you recall an incident involving some 83 persons on July 13, 1947? A. That's true.

Q. What was the locality of that incident? [454]

A. The location was named Turner's Switch. It is on the opposite side of the city, the opposite side of Wahiawa, several miles out.

(Testimony of Neal Donahue.)

Q. What time of day did that occur?

A. Approximately 1:30 in the afternoon.

Q. Now were you a witness to any occurrence at Turner's Switch that afternoon? A. I was.

Q. Did you observe any obstruction to the passage of a company truck at that place?

A. I did.

Q. And did you observe any use of physical violence by picketers there? A. I did.

Q. How do you know that they were picketers, Captain Donahue?

A. I have been on the detail, what we call the strike detail, and I had been on it for several days, and I had been up and down that road and the other roads all morning and all afternoon, on the days I was assigned out there, and on this particular day I know they were picketers by the armbands they were wearing, and from conversations I held with members of the group, and observing the method of operation, what they were doing at that particular time.

Miss Lewis: If the Court please, I don't propose to go into the whole incident. I would like to offer a copy of [455] the information in the other matter before Judge Moore, which will speak for itself, and call the Court's particular attention to the fact that in this case, among other counts, it is charged that there was obstruction to the passage of a truck, and that was on page 7, and also that,—I call the Court's attention to page 10, a count charging that

(Testimony of Neal Donahue.)

the defendant engaged in violence against one Earl Kamajo.

Judge Biggs: Are you offering the indictment?

Miss Lewis: It is an information of the Attorney General.

Judge Biggs: Are you offering the information?

Miss Lewis: Yes, your Honor.

Judge Biggs: Do you object, as to form?

Mrs. Bouslog: No, your Honor.

Judge Biggs: Do you object?

Mrs. Bouslog: Yes. We don't concede the correctness of the facts. We admit that it is the information.

Judge Biggs: All right, we will admit it subject to the usual ruling, and I might say I entertain some doubt as to the relevancy of this document. We also,—at least I entertain, and I speak for my brethren,—some doubt; that we did not go too far afield in our previous ruling. We may have been in error in that ruling. If so, we will strike that out as well.

Miss Lewis: I made it as brief as possible, to show that inasmuch as the Attorney General is concerned, this is what he has done about that particular incident. [456]

Cross-Examination

By Mrs. Bouslog:

Q. What has happened to the other 83 people? There are now 11 charged?

(Testimony of Neal Donahue.)

A. That I don't know. All 83 were brought in and charged.

Q. Was there one woman,—there was, was there not?

A. Yes, I believe so, and one juvenile.

Q. And she was spelling her husband on the picket line,—do you know? She was taking her husband's turn on the picket line?

A. If I am correct, Mrs., there were no women at the Turners' Switch incident.

Q. With the 83?

A. No, I saw no woman there.

Q. And you don't know what happened to the other 83 people who were arrested at this same time?

A. I had heard that the cases were nolle prossed, if that is what you mean.

(Witness excused.)

Miss Lewis: I have nothing further.

Judge Biggs: Have you anything further?

Mrs. Bouslog: No further witnesses. I would like to have counsel stipulate that Mr. Ackerman, Walter D. Ackerman, Jr., took office as Attorney General October 14, 1947.

Miss Lewis: It is so stipulated in the cases.

Judge Biggs: So stipulated. [457]

Mrs. Bouslog: That prior to that time he was Treasurer of the Territory of Hawaii, and not in the office of the Attorney General, during the time that we have been discussing here.

Judge Biggs: Will you so stipulate?

Miss Lewis: That he was treasurer before the appointment, and not in the Attorney General's office during 1946 or 1947, up to that date?

Mrs. Bouslog: Yes.

Judge Biggs: So stipulated.

Have you anything else, Mr. Crockett?

Miss Lewis: I take it the matter of the production of that document is what remains.

Judge Biggs: Now, first of all, do you rest?

Miss Lewis: Yes, your Honor.

Judge Biggs: How much do you have in rebuttal, if anything?

Mrs. Bouslog: Your Honor, my rebuttal will be very short. I don't think it will take more than 10 or 15 minutes.

(Discussion as to time for adjournment, and for reconvening, etc., and as to the matter of argument.)

Judge Biggs: We will meet at 10 o'clock tomorrow for argument.

We will adjourn at this time.

(Adjourned.) [458]

April 27, 1948, 10 A.M.

(The trial was resumed.)

Judge Biggs: Proceed.

Mrs. Bouslog: Your Honor, I have a correction to the Defendants' Exhibit K, which is a correction in the statement of counsel. Mr. Crockett has indicated on the statement that he has no objection to

this being made. I would ask the Court to permit this correction to be attached to Defendants' Exhibit K for the purpose of showing the correction.

Judge Biggs: Let it be so attached.

Mrs. Bouslog: I will call Benjamin Awana.

Judge Biggs: Mr. Awana has been sworn.

Mrs. Bouslog: Mr. Awana has been sworn, your Honor.

BENJAMIN K. AWANA

a witness called by and on behalf of the plaintiffs, being previously sworn, resumed the stand and further testified as follows:

Redirect Examination

By Mrs. Bouslog:

Q. Mr. Awana, you were present in court and heard assistant chief of police Mr. Freitas testify?

A. Yes.

Q. Was there any pushing at Paia at the time of the incident, Mr. Awana? A. There was.

Q. Before Chief Freitas read some law to you about loitering? [459] A. No, ma'am.

Q. Now, Chief Freitas testified that the pushing started and stopped and then there was another push. Was there a second push?

A. No, ma'am.

Q. What happened after the one push?

A. The pickets returned back to walking the picket line and the "scabs" went back with the police officers, on the opposite side of the street.

Q. These are the same—— A. Yes.

(Testimony of Benjamin K. Awana.)

Q. ——reproductions of the same——

Mrs. Bouslog: I have in my hand, your Honors, Defendants' Exhibit A-1.

Q. (By Mrs. Bouslog): Mr. Awana, will you look at Defendants' Exhibit A-1; that is the same picture you have in your hand? A. Yes.

Q. And tell at what time that picture was taken and what is happening.

A. Well, I cannot give the exact time the picture was taken, but this is just before the "scabs" attempted to go to work.

Judge Biggs: Can you hear, Miss Lewis?

Mr. Crockett: Not very well.

Judge Biggs: Will you keep your voice up, please?

Q. (By Mrs. Bouslog): Will you go through Defendants' [460] Exhibit A-1 to A-5 and tell the Court what each picture shows is happening, very briefly, in relation to the one push that took place? Will you look at these exhibits, that have the numbers on them, and say which picture are you referring to at the time?

A. Well, in A-1 we were—just before we had two columns going in a circle, and in A-2 police officers and "scabs" approach the line, but on the upper end, at the Makawao end, the line was still in motion. And in A-3 Chief Freitas summoned the pickets together. In A-4 he was reading the law to us. And in A-5, before we could get our men into a walking picket line, that is when the push began.

(Testimony of Benjamin K. Awana.)

Mrs. Bouslog: Your Honors, yesterday before adjournment the Court said something about identifying the film.

Judge Biggs: Yes.

Mrs. Bouslog: I have talked with the defendants and we are willing, and they are willing to stipulate on what is already in the record from their witness, Mr. Long, who said it did represent the pickets at Paia at the time.

Miss Lewis: At what time? We didn't stipulate at a particular time.

Mrs. Bouslog: Oh, I see.

Miss Lewis: Just what he testified. And he told Mrs. Bouslog what she wanted to stipulate.

Mrs. Bouslog: I misunderstood, Miss Lewis. I thought [461] you said you would stipulate that they could go in without further identification.

Miss Lewis: That is correct, but subject to the other objections. And we thought the record already showed what they were; that no stipulation would be needed.

Judge Biggs: I don't think that stipulation is needed, speaking for myself. Here are pictures which have been testified to by Mr. Long as representing the conditions of the picket line and picketing conditions during the course of the strike.

Mrs. Bouslog: Though he could not identify them as before or after the incident.

Judge Biggs: Is my recollection correct?

Mrs. Bouslog: I believe he did identify them,

(Testimony of Benjamin K. Awana.)

that he knew that they were not after the seventeenth, because picketing had stopped.

Judge Biggs: Yes. Not after the seventeenth, but the incident was the sixteenth, and they could have been taken on the seventeenth or they could have been taken before the sixteenth. I have difficulty in seeing how it is material to identify them further, unless they actually come in at the time of the incident, and you don't contend that they did.

Mrs. Bouslog: We do not, your Honor.

Judge Biggs: So that, Miss Lewis, you are prepared to stipulate that they were pictures taken of the picketing during the course of this entire period of the strike?

Miss Lewis: Yes, your Honor. During the course of the [462] strike. Now Mrs. Bouslog has clarified it. She doesn't claim it is during the incident, certainly.

Judge Biggs: Is that the fact?

Mrs. Bouslog: That is right.

Judge Biggs: Then it is so stipulated by the parties, and it is our opinion that no further identification is necessary. The Court so rules.

Mrs. Bouslog: Mr. Crockett, you may cross-examine. I have no further questions.

Judge Biggs: Cross-examine.

Mr. Crockett: I have no further cross-examination.

Judge Biggs: That is all.

(The witness was excused.)

Judge Biggs: May I inquire whether or not you have received the document Chief Freitas was to send?

Mrs. Bouslog: We have not, your Honor. Mr. Crockett advises me that the plane doesn't arrive until 9 o'clock.

Judge Biggs: It takes a little while, of course, to get it down here.

Swear the witness.

Mrs. Bouslog: Your Honor.

Judge Biggs: Yes, Mrs. Bouslog.

Mrs. Bouslog: In the shortness of time I did not have time to subpoena the Treasurer of the Territory to obtain from the Treasurer of the Territory a copy of the constitution and [463] by-laws of the Oriental Benevolent Association, of which Mr. Crockett testified Mr. Gamponia, the Filipino member now on the grand jury, is a member. I have showed him the constitution and by-laws, which state on their face that they are filed and certified by the insurance department of the Territory of Hawaii, but the defendants do not want to accept this as proof. If the Court will permit——

Judge Biggs: As proof of what?

Mrs. Bouslog: As proof of—that these are the constitution and by-laws.

Judge Biggs: What were you going to say?

Mrs. Bouslog: I will get a certificate from the Treasurer of the Territory that these are a certified copy of the by-laws, but because of the shortness of time we ask the Court's permission at this time

to use these but to substitute a copy certified by the Treasurer.

Judge Biggs: Proceed. No objection to that course?

Mr. Crockett: I have an objection to the materiality; I do not see the materiality.

Judge Biggs: What is the materiality?

Mrs. Bouslog: Your Honors, the defendants have put into the record a copy of the 1948 grand jury list, and Mr. Crockett in making a statement stated that there was now a person of Filipino nationality and background on the jury, and he stated that he was the president of the Oriental Benevolent [464] Association. Since we contend that the method of selection and composition of grand juries continues to be non-representative and a non-cross-section, we are showing as our rebuttal to Mr. Crockett's statement the relation of Mr. Gamponia to the union.

Judge Biggs: Mr. Crockett, I had some doubt as to the admissibility of your exhibit, I think it was your exhibit, in respect to the 1948 grand jury. We may have erred in admitting it, but if it is correctly in evidence, why is this not material as rebuttal evidence?

Mr. Crockett: If the Court please, my testimony concerning Mr. Gamponia only concerned Mr. Gamponia as an individual, and I mentioned incidentally as to his occupation being connected with this organization. Now, are we going to go back of the organization? Where is that material? To estab-

lish the identity of Mr. Gamponia as a Filipino member of our community and a citizen.

Judge Biggs: Just a moment, please. Mrs. Bouslog, we are of the opinion that this matter is collateral, but we think we probably erred in permitting testimony as to the 1948 grand jury. We will overrule Mr. Crockett's objection and receive it, subject to the usual ruling, but we will not pursue any collateral issue with respect to it any further.

Mrs. Bouslog: Except in respect to Mr. Gamponia?

Judge Biggs: We think that we probably erred in permitting testimony as to the 1948 grand jury. We did so, however, [465] and Mr. Gamponia came into the picture at that time. I suppose that you are offering this to show that he was in fact the head of this organization?

Mrs. Bouslog: No. Mr. Crockett so stated on cross-examination. Our offer of proof is that Mr. Gamponia is known and generally known as anti-union.

Judge Biggs: How will this prove it?

Mrs. Bouslog: This will show it because it shows right on its face that although dues continue, all benefits cease during periods of strike.

Judge Biggs: You can see how far away from actual proof that is.

Just a minute, Miss Lewis. We will hear you fully.

Mrs. Bouslog: I offer this as testimony connecting this up with the policy of this association and of its officers.

Judge Biggs: Just a minute.

Miss Lewis: I just wanted to say this. The reason we could not stipulate to this being the constitution and by-laws is that Mrs. Bouslog herself agreed, when we discussed it before the Court, that this was now in liquidation, and we therefore said we would have to check this, as to its status now in the Treasurer's office, but if it is now in liquidation I think it is even more remote.

Judge Biggs: I think it is very remote indeed, but I am not prepared, at this stage of the case, to state that it is not entirely immaterial, in view of our prior ruling, which [466] may have been erroneous, respecting the 1948 grand jury.

We will receive it with a great deal of doubt as to its materiality or relevancy. It really seems to me to be a collateral matter, but we will receive it none the less, subject to motion to strike.

The Clerk: Plaintiffs' Exhibit No. 30.

Mrs. Bouslog: And a certified copy will be substituted.

Judge Biggs: Yes.

(The document referred to was marked Plaintiffs' Exhibit 30, and was received in evidence.)

[Printer's Note]: See page 1790. This exhibit was later marked Exhibit 32.

PLAINTIFF'S EXHIBIT No. 32

Territory of Hawaii Treasury Department
Honolulu

I, William B. Brown, Treasurer of the Territory of Hawaii, do hereby certify that according to the records of the Territorial Treasurer's Office, the

Amended By-Laws of the Oriental Benevolent Association, as certified on December 31, 1940 by Philip P. Gamponia, its President, and Canuto Tacderan, its Secretary, reads in part as follows:

"Article II:—Objects and purposes. Section 1: (c) To inculcate respect and consideration for employers of members and to instill an understanding of the dignity of labor. (d) To promote a knowledge and observance of the laws of the United States of America and of local laws, the rules and regulations of employment, and matters of general welfare and interest, especially as the same particularly affect its members."

"Article VIII:—Benefits. Section 2. Any member, having decided to depart from the Territory of Hawaii, shall file with the Secretary, in writing, an application or claim for benefits accrued to him, and in form and content as prescribed by the Board of Directors, not less than forty-five (45) days prior to the proposed date of such departure, which application or claim shall be referred to the Board of Directors for verification and approval as a prerequisite to payment, but approval shall not be arbitrarily withheld by the Board of Directors. However, the application of any member who may be participating in an organized and general strike against his regular employment may not be approved until such strike is terminated. Of the benefit accrued, such sum, if any, as the Board of Directors may determine, may be advanced and paid to the member before his departure; the balance, if

any, may be paid in suitable exchange, payable to the member, at the place of his contemplated residence."

That as of December 20, 1947, Philip P. Gamponia was the President of Oriental Benevolent Association:

That on December 22, 1947, pursuant to the resolution adopted by the shareholders of the Oriental Benevolent Association at a special meeting held in the Baldwin High School Auditorium, Wailuku, Maui, Saturday, December 20, 1947, to dissolve the association, the following persons were appointed by the Insurance Commissioner of the Territory of Hawaii, as Trustees to carry out the dissolution:

Philip P. Gamponia, Demtrio Gamponia, Canuto Tacderan, Aurelio Quitoriano, John S. Brown.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Treasurer's Office, at Honolulu, Territory of Hawaii, this twenty-ninth day of April 1948.

[Seal] /s/ WILLIAM B. BROWN,
Treasurer, Territory of
Hawaii.

Admitted.

Mrs. Bouslog: I call the Court's attention particularly to article 2, sections C and D and to section 2 of article 8.

Judge Biggs: I think we have gone as far on this collateral matter as we should, and somewhat further.

Miss Lewis: I wanted to ask the Court, in view of the fact that Mrs. Bouslog is allowed to substitute a certified copy later, shouldn't that certificate show the present status in the Treasurer's office?

Mrs. Bouslog: We will be very glad to.

Judge Biggs: I am quite clear it should disclose the present status of the society.

Mrs. Bouslog: That is in voluntary liquidation.

Judge Biggs: I don't think that the fact it is in involuntary or voluntary liquidation to be any more pertinent than any other issue; it is as pertinent, of course. Pure speculation. We are now speculating. [467]

Mrs. Bouslog: Your Honors, because of your Honors' ruling I will make an offer of proof about what I am going to prove by the witness who has just been sworn.

Judge Biggs: Do it by question and answer. I think that is the best way.

Mrs. Bouslog: It has a relation to Mr. Gamponia.

Judge Biggs: All right. Do it by way of question and answer, rather than by way of offer.

MARCELINO PACPACO,

a witness called by and on behalf of the plaintiffs, in rebuttal, being first sworn, was examined and testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name, please?

A. Marcelino Pacpaco.

Q. Speak louder, please.

Judge Biggs: I cannot hear you.

A. Marcelino Pacpaco.

Q. Will you talk so that Mr. Crockett, down here, can hear you?

A. Marcelino Pacpaco.

Q. (By Judge Metzger): P-a-c-p-a-c-o?

A. Yes.

Q. (By Mrs. Bouslog): Do you recall a meeting in June or [468] July 1946, held at Haile Maile camp on Maui? A. Yes.

Q. Were you present at that meeting?

A. Yes.

Q. Who called the meeting?

A. Filipino Community of Haile Maile.

Q. Who was present at the meeting?

A. Mr. Demetro Gamponia, Jack Hall, Mr. Bob Mokini, and most of the workers of Haile Maile.

Q. How many workers at Haile Maile?

A. Around 100 at present.

Q. What was the purpose of the meeting?

A. To organize the workers at Haile Maile to be in ILWU.

(Testimony of Marcelino Pacpago.)

Q. You say that Demetro Gamponia was present? A. Yes.

Q. Do you know who he is? A. Yes.

Q. Who is he?

A. He is an officer of the Oriental Benevolent Association.

Q. Is he any relation to Filipino—to Philip Gamponia, the president of the association?

A. Yes.

Q. Showing you plaintiffs' Exhibit 30, is that the Mr. Demetro Gamponia, the one you are referring to? A. Yes. [469]

Q. Did Demetro Gamponia speak at this meeting? A. Yes.

Q. Did he make a speech or what did he say at the meeting?

Mr. Crockett: To which we object, if the Court please, as incompetent, irrelevant, and immaterial.

Judge Biggs: Isn't this the brother?

Mrs. Bouslog: This is the assistant treasurer of the Oriental Benevolent Association. Mr. Gamponia is the president.

Judge Biggs: I think you had better make an offer.

Mrs. Bouslog: I offer to prove that at the time when this meeting was held to organize the workers into this particular union, plaintiff, Mr. Demetro Gamponia appeared and stated he was present at the request of the industry and that he wanted to translate for Mr. Jack Hall and the others the

(Testimony of Marcelino Pacpago.)

speech that was being made. In the process of translating the speech to the organization he told the workers that they didn't need a union, that the company would do everything for them that the union could do.

Judge Biggs: This is not a member of the grand jury though?

Mrs. Bouslog: This is a member of the Oriental Benevolent Association, which is run by the Gamponia family. The whole family are officers and members. Your Honor, here is a list of the officers.

Judge Biggs: Pass it up, please.

Mrs. Bouslog: Yes.

Judge Biggs: D. Gamponia is Demetro Gamponia?

Mrs. Bouslog: Yes.

Judge Biggs: Assistant treasurer.

We will hear you fully, Mr. Crockett, in just a moment, please.

Now then, you offer this for the purpose of proving that a member of the grand jury of the Filipino nationality in 1948 was, as you put it, and this is your characterization simply repeated by the Court, "anti-union," and to prove that you say that a brother who is a member of an association made a speech to the workers that they did not need a union to represent them. My first question is: What does the Oriental Benevolent Association have to do with that? Couldn't you prove, assuming its relevancy, that this particular individual made an anti-

(Testimony of Marcelino Pacpago.)

union speech, without regard to his connection to an organization?

Mrs. Bouslog: We will. We have a witness who will testify as to Mr. Philip Gamponia, who is personally acquainted with him and the statements he has made. Your Honor, this is not for the purpose of showing that a particular individual on the 1948 grand jury is anti-union. The purpose for which the plaintiffs are offering to show it is that the 10,500 Filipinos in Maui County are not properly represented by a representative who understands and speaks for them. In other [471] words, the grand jury the forty-eight the fact that they are had never been any Filipinos on the grand jury before is admitted by the defendants up to this point. Then they come into this Court and represent "But now we have one." And we want to show, if it please your Honors, that even though there is one, the grand jury still lacks the character of a cross-section of the community.

Judge Biggs: Yes. But you are getting away from this document which has been introduced in evidence as Exhibit No. 30. I don't see the connection between what the witness will testify to in regard to your offer and the Oriental Benevolent Association. Will you point that out?

Mrs. Bouslog: The policy of the Oriental Benevolent Association, as shown by its by-laws already

(Testimony of Marcelino Pacpago.)

introduced in evidence, is to deny any benefits to its members while they are on strike, and to encourage the relations with the employer apart from union activity.

Judge Biggs: All right. Now Mr. Crockett.

Mr. Crockett: If the Court please, even assuming that counsel would prove what counsel says, that is, to show that Mr. Gamponia is not a proper member of the community to represent these 10,000 Filipinos, that he doesn't come into her picture of or a definition of the cross-section, if the Court please, this action is fundamentally against the jury commissioners, alleging that they have acted without discretion, and this objection is a matter of individual objection to Mr. Gamponia [472] himself. They have the right under the statute to make a challenge as to Mr. Gamponia as an individual member of the panel at the time he was drawn and sworn, but that does not show that the jury commissioners have been discriminatory. It is not up to the jury commissioners to go out and search out the highways and by-ways.

Judge Biggs: We understand that, Mr. Crockett.

Mr. Crockett: Yes.

Judge Biggs: Mrs. Bouslog, we feel this is too remote. If you have a witness who can testify respecting a matter stated by a member of the jury commission, by the jury commissioner himself——

Mrs. Bouslog: By the jury commissioner, your Honor?

(Testimony of Marcelino Pacpago.)

Judge Biggs: Isn't Mr. Gamponia a jury commissioner? Mr. Gamponia is now a member of the grand jury.

Mrs. Bouslog: That is correct, your Honor.

Judge Biggs: If you have a witness who can testify that the member of the grand jury himself, Mr. Gamponia, has made some statement——

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: We think that might be admissible, but we think this is too remote.

Mrs. Bouslog: All right. I have no further questions from Mr. Pacpaco.

Do you have any questions, Mr. Crockett?

Mr. Crockett: No questions.

(The witness was excused.) [473]

Mrs. Bouslog: I will call Mr. Pedro De la Cruz. The witness has already been sworn, your Honor.

Judge Biggs: Yes.

PEDRO DE LA CRUZ

was recalled as a witness by and on behalf of the plaintiffs, on rebuttal, and being first sworn, further testified as follows:

Direct Examination

By Mrs. Bouslog:

Q. Will you state your name for the clerk, please? A. My name is Pedro De la Cruz.

(Testimony of Pedro De la Cruz.)

Q. Do you know Mr. Philip Gamponia?

A. Yes.

Q. How long have you known him?

A. Since 1936.

Q. Did he ever have a conversation with you about his relations to the pineapple or sugar industry? A. Yes.

Q. Will you tell the Court? Where and when did you have this conversation?

Mr. Crockett: We object, if the Court please.

Judge Biggs: I think that is admissible. Purely preliminary in any event. Objection overruled.

Q. (By Mrs. Bouslog): Where and when did you have this conversation?

A. In my house in Lanai City in 1946. [474]

Q. Will you tell what that conversation was?

A. He asked me if I wanted to be a social worker for the company, and if I would like the job he could with his influence, influence to the manager, he could put me on the job.

Q. At that time did you hold any office in the union?

A. No; there was no union at that time.

Q. What did you mean by "social worker"?

A. Well, I don't know exactly, but to work in the personnel office, working among the Filipinos, to make good relations among themselves with the company.

Q. Mr. De la Cruz, you testified that this conversation took place in what year?

(Testimony of Pedro De la Cruz.)

A. In 1936.

Q. 1936? A. Yes.

Q. Do you still know Mr. Gamponia?

A. Yes.

Mrs. Bouslog: You may cross-examine. Oh, yes. That is all in relation to the grand jury.

Mr. De la Cruz, do you know——

Miss Lewis: Just a minute, Mrs. Bouslog, before you go further. We would like to move to strike, now that the witness corrected the date. It is apparent that twelve years ago is much to remote to prove anything.

Judge Biggs: We think it is very remote, but we will not strike it at this time. We will make it subject to the [475] general motion to strike.

Proceed, Mrs. Bouslog.

Q. (By Mrs. Bouslog): Do you know of your own knowledge when the white line, the white kapu line was painted down at the harbor on Lanai?

A. It was immediately before the strike in 1947.

Q. Before the preparation for the strike there was no kapu line or no white line there?

A. No.

Mrs. Bouslog: All right. That is all; you may cross-examine.

Mr. Crockett: No cross-examination, your Honor.

Judge Biggs: That is all; thank you.

(The witness was excused.)

Judge Biggs: Mrs. Bouslog, before I forget it, weren't you going to offer some proof at a later point, after Mr. Young——

Mrs. Bouslog: Your Honor, what Mr. Crockett stipulated to was that he would, and we have reserved a number——

Judge Biggs: Oh, yes.

Mrs. Bouslog: For the insertion into the record of a certificate by the secretary of the Junior Chamber of Commerce and by the secretary of the senior Chamber of Commerce as to the motions that they adopted as to their members who are also members on the grand jury.

Judge Biggs: Yes. I remember that was stipulated to, [476] and the number was reserved. I think it was No. 19.

The Clerk: 18.

Judge Biggs: 18.

The Clerk: Or 8.

Judge Biggs: It will appear from the record. I have forgotten the number.

Mrs. Bouslog: We are in the process of getting those two certificates or statements.

Judge Biggs: Very well.

Mrs. Bouslog: Am I correct, Miss Lewis and Mr. Crockett, in saying that they may go in subject to your motion—subject to your examination of the certificate and without recalling the witness?

Judge Biggs: And subject to the same ruling as to relevancy.

Miss Lewis: So far as recalling the secretary, I do not require that, but I haven't seen it and I don't know what she means by——

Judge Biggs: You either have a stipulation or

you don't. I was under the impression it had been stipulated to by counsel that the secretary of the Chamber of Commerce and the secretary of the Junior Chamber of Commerce might present certificates as to their members on the grand jury; that you reserved all of your objections as to relevancy but none as to form.

Miss Lewis: That is correct. [477]

Mrs. Bouslog: Have you received the mail yet?

Mr. Crockett: If the Court please, the document requested has just arrived. May we have a short recess of five minutes?

Judge Biggs: A recess for five minutes or longer.

(A short recess was taken at 10:45 a.m.)

Mrs. Bouslog: Your Honors, the statement was quite long and both counsel had to read it.

If Mr. Crockett is willing to stipulate that at no place in this statement does Mr. Yamauchi order anyone to go out and beat anyone up, then this stipulation will show in the record. Will you so stipulate, Mr. Crockett?

Mr. Crockett: We will not so stipulate.

Mrs. Bouslog: Then we offer it in evidence, your Honor.

Judge Biggs: Will you pass it up, please?

Mrs. Bouslog: We are offering it, as your Honor knows, because Mr. Freitas testified yesterday that Mr. Mac Yamauchi—he had a signed confession from him that he had ordered certain strikers to go out and beat other people up, and that is why

he was named in the unlawful assembly and riot indictment.

Judge Biggs: Counsel have read this through, have they?

Mrs. Bouslog: Both counsel have.

Judge Biggs: Is there any question about what it says in respect to that particular issue?

Mrs. Bouslog: We don't think so, but Mr. Crockett won't stipulate that it doesn't show that.

Judge Biggs: Have you any objection to its admission except as to form and relevancy?

Mr. Crockett: No. We are not objecting to its admission. I will stipulate to it. It speaks for itself.

Judge Biggs: Let it be admitted and marked Plaintiff's Exhibit 31. A copy ought to be substituted therefor, and I take it you have no objection to the substitution of the copy for it.

Mr. Crockett: No. I think we have copies back in the Maui office.

Judge Biggs: If you have copies back there perhaps we could retain this copy?

Mr. Crockett: Yes. Retain this until we send down the copy.

Judge Biggs: The clerk is instructed to obey the stipulation of counsel to the end that a copy may be substituted for this, if it be necessary.

Anything else, Mrs. Bouslog?

Mrs. Bouslog: Your Honor, this just came to my attention, a very recent incident for which I could not on such short notice get a witness to testify this morning. It is a matter reported in the

newspaper. I will show the matter to Mr. Crockett and if he is willing to stipulate that these are clippings, that these clippings represent the charges that are pending in the district court.

The Clerk: Exhibit 31, Mr. Reporter. [479]

(The document referred to heretofore, being statement of Mac Yamauchi, was marked Plaintiffs' Exhibit 31, and was received in evidence.)

PLAINTIFFS' EXHIBIT NO. 31

Wright, Harlow
Lahaina, Maui

Page 1 of pages

Statement received from: Mac Masato Yamauchi by Ass't Chief Freitas in Ass't Chief's Office, Wailuku Police Station on Thursday, November 7, 1946, starting at 2:30 p.m.

Present: Mac Masato Yamauchi, Ass't Chief Andrew S. Freitas, William Seabury, Sr., T. Murayama.

Recorded in shorthand and transcribed by: T. Murayama.

* * *

Ass't Chief Freitas questioning Mac Masato Yamauchi:

Q. What is your full and correct name?
A. Mac Yamauchi.
Q. Are you known by any other names?
A. Masato.
Q. How old are you? A. Thirty-six.
Q. Where do you live? A. Mill Street.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Where is that?

A. Right below the Luna village, Lahaina.

Q. What is your occupation?

A. Carpenter.

Q. Where are you employed?

A. Pioneer Mill.

Q. How long have you been employed by the Pioneer Mill Co.

A. I have been, I don't know how long, but I work for the Pioneer Mill Co. for about six or seven years, then I went to Honolulu when I went to Honolulu war broke out, I worked for two weeks and I came back to Puunene. I worked for U.S.E.D. Naval Air Base and P.N.A.B., engineers, they sent me to Molokai. I was foreman. I came back. Since my mother wasn't feeling very well my parents told me to work at the plantation again. I went to the employment office George Leong call Pioneer Mill Office and asked if they can use me, Taylor was Assistant Manager then, he said, "sure you come back I give you work as carpenter, and ever since I have been working there.

254-255-256

Statement of Mac Masato Yamauchi Page 2

Q. That was what year? A. 1943.

Q. Are you married? A. Yes.

Q. Any children? A. One.

Q. You are a member of the ILWU?

A. That's right.

Q. At present you are an officer of the union?

Plaintiffs' Exhibit No. 31—(Continued)

A. I am a board member.

Q. What union? A. Unit nine.

Q. That's the unit that's located in Lahaina?

A. That's right.

Q. Besides board member you hold any position?

A. No, not in the union.

Q. At the present time you're acting for the union in this strike? A. Yes.

Q. What are your duties at the present time?

A. I am the strike strategy chairman.

Q. How many members in that committee?

A. Six.

Q. Who are they?

A. Apo, Nishimoto, Felix Tugadi, Naba, Fernando Billaverde.

Q. Who are the other officers in this unit?

A. President is Wakida, vice president is Kamei Uchimura, Seabury is our secretary.

Q. You got no treasurer?

A. Treasurer is Matsuda.

Q. Yesterday morning November 6, 1946, did the strike strategy committee have a meeting?

A. No.

Q. Did they meet at any time at 6:00 o'clock in the morning? A. No.

Q. You did not meet at any time yesterday morning? A. No.

256-257-258

Statement of Mac Masato Yamauchi Page 3

Q. Were you present at the union hall yesterday morning? A. Yesterday morning I was.

Plaintiffs' Exhibit No. 31—(Continued)

Q. What time were you at the union hall?

A. About 7:00 o'clock.

Q. Had you been there prior to seven?

A. No.

Q. Is it possible that you were there and you don't recall the time?

A. I came down about 7:00 o'clock.

Q. You positive about the time?

A. Well I usually, I come down about seven.

Q. Is it possible that you came earlier?

A. Maybe few minutes earlier?

Q. Yesterday morning, while around the vicinity of the union hall did you see other members of the union there?

A. Well, we have meeting about eight o'clock and the usual men come down.

Q. Did you see any of the men there when you first arrived there?

A. There were several of them.

Q. Did you see William Seabury?

A. When I came no, I didn't see him.

Q. When did you first see him?

A. Well we were planning to go out fishing and I usually come in the morning and I go back to my home and get my yard cleaned and I come back to the meeting. When I came back to the meeting everything appeared all right.

Q. Did you see William Seabury when you first arrived there? A. No.

Q. You did not see him at any time?

Plaintiffs' Exhibit No. 31—(Continued)

A. No.

Q. When did you first see Seabury yesterday morning? A. Well at the meeting.

Q. That was about what time?

A. About eight-thirty.

Q. You didn't see him prior to eight-thirty?

A. No.

Q. You see Ben Kaita at the union hall?

A. No.

258-259-260

Statement of Mac Masato Yamauchi Page 4

Q. Did you see him at all yesterday?

A. Well, yesterday I went out fishing out the stone crusher, I saw Ben there.

Q. What time was that?

A. About nine-thirty, close to ten o'clock.

Q. Is that the first time you saw him?

A. Yes.

Q. Did you see him when you first arrived at the union hall at any time? A. No.

Captian J. D. Seabury enters room:

Q. Did you see Takeo Taira yesterday?

A. No.

Q. Did you see him at all? A. No.

Q. You didn't see him at any time?

A. Maybe he was at the meeting.

Q. What time was that meeting?

A. About eight-thirty.

Q. Prior to that you see him? A. No.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Toyama, did you see him prior to the meeting yesterday morning? A. No.

Q. Roque, did you see him yesterday?

A. No.

Q. Did you see him at any time in the morning yesterday? A. No.

Q. Did you see Jose Sulliban at any time yesterday morning?

A. No, maybe he was at the meeting.

Q. Did you see him prior to the meeting?

A. No.

Q. Did you see Masaru Mizomi yesterday morning? A. No, I saw him at the meeting.

Q. That was about what time?

A. About eight-thirty.

Q. Did you see him prior to eight-thirty?

A. No.

260-261-262

Statement of Mac Masato Yamauchi Page 5

Q. Did you see Ichio Hirata yesterday morning?

A. He came down in the morning.

Q. That was about what time?

A. That was about eight o'clock.

Q. You didn't see him prior to eight o'clock?

A. No.

Q. You know this man sitting here? (Indicating William Seabury.) A. Oh, yes.

Q. What's his name?

A. William Seabury.

Ass't Chief Freitas questioning William Seabury:

Plaintiffs' Exhibit No. 31—(Continued)

Q. You have already given a statement to the police, did you not? A. Yes.

Q. You have given the account as to what took place? A. Yes.

Q. Yesterday morning what time did you report to union headquarters, that's November 6, 1946?

A. I was down there about six o'clock.

Q. Upon your arrival over there who did you see over there?

A. Few boys was around. Our chairman came little late.

Q. About what time would you say your chairman came? A. About a little after six-thirty.

Q. When you speak of your chairman, you mean Mac Yamauchi here? A. Yes.

Q. You have conversation with him yesterday morning? A. Yes I had.

Q. What was the conversation about?

A. We got together and got all the drivers who own cars to gather together, and drivers got together and cars were in the bunch to go to different places, the bunch of men to each car to stop the scabs that were irrigating.

Q. You people were given instruction as to what to do, were you not? A. Yes.

Q. Who gave those instructions?

A. Chairman Mac Yamauchi.

262-263-264

Statement of Mac Masato Yamauchi Page 6

Q. What were the instructions given?

Plaintiffs' Exhibit No. 31—(Continued)

A. Have to stop the irrigation, if we see scab irrigating, we have to stop the irrigation and use our own judgment.

Q. Was there any mentioning as to if they refuse to listen to your request, as to what you people were to do? A. Use your own judgment.

Q. That statement about stop the irrigation was made by who? A. Our chairman.

Q. There were quite a lots of men around the union hall? A. Yes.

Q. Who directed these men into different cars to go to different localities? A. Our chairman.

Q. By that you mean Mac Yamauchi?

A. Yes.

Q. He assigned various union members to get into different automobiles is that right?

A. Yes.

Q. Did you assist in getting different individuals? A. Yes.

Q. Besides you and Mac, anybody else assist in directing these individuals into vehicles?

A. No.

Ass't Chief Freitas questioning Mac Masato Yamauchi:

Q. Mac Yamauchi, you heard what Mr. Seabury has to say? A. Yes.

Q. Is that right? A. That's right.

Q. Have you anything to say in regards to what he has to say? A. No.

Q. Is he telling the truth? A. Yes.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Then the statement you already given as not being present sometime after 6:00 a.m. yesterday morning, November 6, 1946, was not the truth?

A. Well, I came there about seven o'clock, I don't know whether it was a little earlier or not, I usually leave my house about seven o'clock.

264-265-266

Statement of Mac Masato Yamauchi Page 7

Q. But you did go to union headquarters prior to eight-thirty like you first stated? A. Yes.

Q. You and Mr. Seabury got together over there and made plans as to what action to take?

A. That's right.

Q. What were the plans?

A. To stop the irrigation.

Q. You had reports as to who were irrigating?

A. Yes, I did.

Q. What were these reports about?

A. Well, these folks were irrigating so couple times, they all trying to make monkey out of us they were getting our goat, the ranking file come after me, what are we going to do with these guys, what can I do, why not go out and stop them, well use your own judgment.

Q. Did you have any knowledge as to who the so-called individuals were irrigating?

A. Yes, we got reports of them, all the time reports were coming in, we didn't do anything.

Q. Did you at any time contact the so-called

Plaintiffs' Exhibit No. 31—(Continued)

individuals who were irrigating and request them not to do so?

A. Well, not these individuals but the others, we told them try not to go out irrigating but they keep on going, by doing this you folks are prolonging the strike, they seem not to be worried about it.

Q. But this Harlow Wright, Mike Nelson and James Backland, did you or any member of this unit inform these individuals not to irrigate at any time? A. No.

Q. But you did receive information that they were irrigating? A. Yes, time and time again.

Q. About how many times?

A. Ever since the strike started, they have been irrigating about a month.

Q. Don't you think the proper thing, Yamauchi, would be to contact these individuals and ask them not to do it?

A. When the boys approached them I understand, are you irrigating or are you going home, they said I'm going to irrigate.

Q. Who gave you that information?

A. Somebody.

266-267-268-269

Statement of Mac Masato Yamauchi Page 8

Q. That they did tell him that?

A. I think so.

Q. You think this information that you received, you consider that reliable?

A. I got this from the boys.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Who was this boy?

A. I don't know from whom I heard that remark.

Q. To make matters short, as a matter of fact you don't like to divulge the individual who told you that? A. No.

Q. On election day, November 5, 1946, word had been passed to various members of the unit to report to headquarters the following morning, is that right? A. No, not from me.

Q. You know if any instructions had been given to the men to inform them to report? A. No.

Q. Maybe you don't quite understand me, on election day information was given various members to report at the union hall about six o'clock?

A. No, that was before election day, we told them we were going to have a meeting.

Ass't Chief Freitas to William Seabury:

Q. Seabury you were informed, what time was it?

A. My statement was my son told me election day when I got home to report the following morning.

Q. Your son tell you who gave you that information?

A. He said one picket chairman, but I don't know what picket chairman.

Ass't Chief Freitas questioning Mac Yamauchi:

Q. Why I asked that, various individuals stated that you had passed to them to report the following

Plaintiffs' Exhibit No. 31—(Continued)

day for orders they had no knowledge, I was just trying to bring that out.

Q. Now that morning of the 6th when you had these various men at the hall there, how many did you estimate were there?

A. I don't know about seventy-five to a hundred I think.

Q. How many cars all told?

A. I don't know, about twelve I think, eight or twelve.

269-270-271

Statement of Mac Masato Yamauchi Page 9

Q. How many cars did you detail to Olowalu?

A. Eight I think.

Q. Is it possible could be more but you're not sure?

A. No, Moir got hold of the fisherman and pulled their spear out of their car. Moir asked them where they going, we going fishing, and he said fishing be damned and pulled the spear and took off his necktie and wanted to fight, Captain Ontai was there but didn't say a word, according to these boys. Buchanan was there, and he told Moir better leave the spear there before you get in trouble.

Q. Where did this take place?

A. Near Olowalu, these boys were coming back, they went out fishing, it was windy so they were coming back, this is our diving crew, they go out every morning.

Q. How many cars did you send elsewhere?

Plaintiffs' Exhibit No. 31—(Continued)

A. Two or four.

Q. Where did you send the two?

A. Two up in Lahainaluna District one out in crater district.

Ass't Chief Freitas questioning Seabury:

Q. Mr. Seabury how many cars went to the Olowalu District? A. Ten cars.

Q. Three cars park by Olowalu Store and three went to field four and five and three went checking further on up towards Wailuku? A. Yes.

Q. What you call that area there?

A. That's still Olowalu yet.

Q. The field over there? A. Fourteen.

Q. One patrol was patrolling? A. Yes.

Q. That made a total of ten cars is that right?

A. Yes.

Ass't Chief Freitas questioning Mac Yamauchi:

Q. Is that about the right amount Mac?

A. I don't know, I thought it was eight.

Q. Don't you check, don't you keep a record of what you do?

A. I just tell them go, I don't know.

272-273-274

Statement of Mac Masato Yamauchi Page 10

William Seabury interrupts:

That's right he say, he don't know.

Q. Maybe I thought you keep a record of what you send? A. No.

Captain Seabury leaves room and re-enters with Roque Omisol:

Plaintiffs' Exhibit No. 31—(Continued)

Q. Mac, do you know that man sitting there? (Indicating Roque Omisol.) A. Yes.

Q. What's his name?

A. I call him Shorty.

Ass't Chief Freitas questioning Roque Omisol:

Q. Roque, yesterday morning you go meeting?

A. Headquarters office.

Q. Before you go inside car go Olowalu you see Mac over there?

A. Yes, he was in front with us.

Q. What Mac tell all you men?

A. Tell us go some place and look around maybe somebody hanawai.

Q. Suppose you see somebody hanawai what you suppose to do? A. Give him, send him home.

Q. Suppose this man no go home what you suppose to do?

A. Suppose he push you back you get right to give him licking.

Q. How many stop around headquarters when Mac made this statement? A. Around fifty.

Q. What he suppose to do suppose no go home?

A. If he give us action push back, lick him.

Q. He speak hemmo clothes?

A. Hemmo clothes, make naked.

Q. This is the man sitting here said that? (Pointing to Mac.) A. Yes.

Toyama enters room:

Ass't Chief Freitas questioning Toyama:

Q. Toyama, the police have already obtained statement from you is that right? A. Yes.

Plaintiffs' Exhibit No. 31—(Continued)

Q. In your statement you inform the police how you reported to headquarters yesterday morning?

A. Yes.

272-275-276

Statement of Mac Masato Yamauchi Page 11

Q. Instructions were given as to what you men were to do in preventing different overseers from irrigating? A. Yes.

Q. Who gave you those instructions?

A. Yamauchi.

Q. Is this the Yamauchi? (Pointing to Mac Yamauchi.) A. Yes.

Q. And all you said in your statement is the same now? A. Yes.

Ass't Chief Freitas to Yamauchi:

Q. Yamauchi, you care to ask any question of Toyama or Roque? A. No.

Q. What they have said is that the truth?

A. I don't know what Toyama said.

Q. But Roque here?

A. Give him licking I didn't say.

Q. What did you say?

A. If they don't want to go home to take off their clothes. I never tell them to give them a licking.

Q. You told them to take off their clothes, you tell them what to do with their clothes?

A. No.

Q. What was the object of having the men take off their clothes?

Plaintiffs' Exhibit No. 31—(Continued)

A. Make them embarrassing, as far as we weren't looking for trouble.

Q. But you did tell them to go out and prevent them from irrigating?

A. That's right we told them.

Q. You told them that if they refuse that they were to do what?

A. Told them take off their clothes.

Q. What else you tell them?

A. That's all.

Q. Did you tell them that if the men give action if they wanted action?

A. I told them if they fight against you use your own judgment.

Q. Did you give them any other further instructions? A. No.

Roque Omisol and K. Toyama leaves room:

276-277-288

Statement of Mac Masato Yamauchi Page 12

Q. Mr. Yamauchi, don't you think you used poor judgment in sending these men out with those instructions?

A. Well, maybe poor demonstration, but really but they were making a monkey out of us.

Q. What you did yesterday in detailing these men what might consider revenge or retaliation?

A. Its no revenge or anything of that sort, just want to stop the irrigation.

Q. You think it would be proper to first contact these individuals before reverting to violence?

Plaintiffs' Exhibit No. 31—(Continued)

A. We did, for instance the other one, you see they approached the man, the personnel director, if you folks touch me you won't go home.

Q. When I say about approaching first, I mean these three fellows that were attacked yesterday, Wright, Nelson and Backland, you already have stated that they weren't informed at any time in the past? A. They weren't told.

Q. Don't you think the proper procedure was first contact them and ask them not to do?

A. We took it for granted that they wouldn't listen to us.

Q. Don't you consider that it was poor judgment? A. Maybe it was poor judgment.

Q. Considering the fact that you are a chairman of the Strategy Committee would you consider that good strategy?

A. Well, maybe I made a mistake.

Q. As a matter of fact Yamauchi, it wasn't necessary to send so many out to stop these fellows from irrigating isn't that right?

A. Well, maybe.

Q. From your own statement Mr. Yamauchi members of the union have approached you and complained of these irrigation is that right?

A. Yes.

Q. And they have complained from time to time?

A. That's right.

Q. How did you arrive at this idea to take action yesterday morning, November 6th?

A. It just arrived, the complaints was coming to me whole month.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Did you receive all these complaints from the members of the union sort of forced you to take action is that correct? A. That's correct.

279-280-281.

Statement of Mac Yamauchi Page 13

Q. When these men left the union hall yesterday morning, what did you do?

A. I was in the office, I went home to do my home work and I came back to the office.

Q. When did you first find out as to what took place up in Olowalu?

A. When I came back from my home.

Q. What did you find out?

A. That it was that they beat this guy up. I told them why did you guys beat him up, this guy wanted to swing hoe at us, they had to do it.

Q. Who told you that? A. One boy.

Q. Who? A. Fujiwara.

Q. Did he say which individual?

A. Both of them.

Q. Now what did they have to say in regard to Wright, did they tell you just what happened between Wright and themselves?

A. Well they told me that they gave him a licking, that's all the information I got.

Q. Did Mr. Wright tried to use a hoe on them?

A. I don't know.

Q. You did not receive any information along those line? A. No.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Were they any other demonstration any place else yesterday morning? A. No.

Q. Those other cars that you sent out did they contact different overseers in different canefield and tell them what to do?

A. One of them approached the personnel director. He was watching two Filipinos that were irrigating. When they approached him who is irrigating, he said, "if you folks looking for anything, you folks ever touch me, you folks not going home" so they just came home.

Q. The other individuals in other cars in other localities, what did they have to report back?

A. They didn't see any irrigating on the other side.

Q. Any member of the union report regarding H. Robinson irrigating? A. No.

Q. Any member reported about Sakamoto irrigating? A. No.

281-282-283-284

Statement of Mac Yamauchi Page 14

Q. How about Joe Garcia and Louis Garcia?

A. That report came from Puukolii, they didn't go out irrigating that's the report I had.

Q. Didn't you send a bunch of men to Puukolii?

A. No.

Q. Weren't there sort of a demonstration at Puukolii?

A. Those picket chairman, they picket the roll call I believe.

Plaintiffs' Exhibit No. 31—(Continued)

Q. In that demonstration at Puukolii, are those individuals all living at the Puukolii area?

A. That's right.

Q. All these various areas have their own picket chairman? A. That's right.

Q. These so-called ten cars that were sent to Olowalu, do you consider that picketing?

A. No.

Q. What's that type of strategy in your circle, when you send individuals out?

A. To stop the irrigation.

Q. That's not considered picketing?

A. No.

Q. Main issue is to stop it?

A. That's right.

Q. Your instructions to the men if they refuse to heed their warning irrigating that they were to take action towards them is that right?

A. Not action, I told them to use their own judgment.

Q. And if they didn't do it they were to strip their clothes? A. That's right.

Q. Mr. Yamauchi, has it ever occurred to you that these men who are irrigating may have a weapon and when union members approach them the way they did that somebody might happen to get killed? A. I didn't have that idea.

Q. Is it possible though?

A. Well, I don't know if its possible, I didn't have no idea that they were carrying a weapon, only maybe police officers.

Plaintiffs' Exhibit No. 31—(Continued)

Q. Mr. Rodrigues sort of insisted that he had a weapon, is that correct? A. Yes.

Q. You are acquainted with the rights of self defense? A. Yes.

284-285-286

Statement of Mac Yamauchi Page 15

Q. You know that a man has perfect right to defend himself? A. Yes.

Q. And you feel now as to the instructions you gave these men yesterday to be improper?

A. Perhaps.

Q. What do you mean by perhaps?

A. Maybe that's a mistake, if you take it in your —if you think that I made a mistake perhaps I made a mistake.

Q. You know for a fact that violence was committed on these individuals irrigating the fields?

A. Yes.

Q. You have been informed about these men being beaten up? A. Yes.

Q. Do you consider it proper for the members of your union to go into private property and beat up people, take the law into their hands?

A. I don't think its proper but they were making monkeys of us.

Q. Aren't there other legal ways that you can do without reverting to violence?

A. I don't know, perhaps you don't understand the situation in Lahaina. These haoles over there they making monkeys out of us.

Plaintiffs' Exhibit No. 31—(Continued)

Q. In what way? A. In every respect.

Q. What for instance?

A. You see, for instance, take a man like Moir, I give you example, where we try to do the best for the community, there's a man in the hospital in very serious condition, he ask for blood transfusion, I had the same type of blood, they asked me for my blood. I'm willing to give my blood. I went to the hospital and when I came back moving the house after the tidal wave, move 8 x 12 when we move these things we need strength and I went back to work after the blood transfusion. I felt kind of tired and called on my boss. I told him I feel tired if I can go home and take rest, they may call for another transfusion, I like to be prepared, if I can be excused for the day. When I called up his home he wasn't there. I call up Main Office, he was having conversation with Moir, he said I better speak to Moir. I told Mr. Moir I just came back from blood transfusion I want to know if its ok to go home. He said you giving blood to someone else is none of the business of the plantation. I told him its employee of the plantation he's in a critical condition, I just wanted to help him. He said again, you giving blood to someone else is none of the business of the plantation. I wanted to hang up. I look into record of the hospital see if they are [illegible] old system. Old system the hospital will pay the blood donor. From where is that money coming from, I told him if that money is coming from that

Plaintiffs' Exhibit No. 31—(Continued)

poor man I don't expect any penny from that, that's the regulation of the hospital. He told me you can go and rest, those things, it hurts, I mean, I have been in the boy scout movement for twenty-two years, and I don't want to create trouble, and they

286-287-288-289-290-291

Statement of Mac Masato Yamauchi Page 17

make a monkey of us and it hurts me inside. Community Christmas tree, we want to cooperate with the plantation they gave us nothing.

Q. This is the thing, when you speak of they, you mean just Moir? A. It's the plantation.

Q. Isn't the man in charge more or less makes the decisions? A. He have the whole say.

Q. For Mr. Moir's misdeeds, why did you hold it against other individuals?

A. The other guys they same thing. They follow the manager, they didn't listen to what we say.

Q. From what you tell me, don't you think they are in fear of their jobs that they have to carry out their instructions?

A. They are afraid of Moir.

Q. Why do you hold it against those individuals?

A. I got to stop them somehow.

Q. Have you any information as to Mr. Moir irrigating himself?

A. He has, we have reports coming in that he was irrigating with the Assistant Manager.

Q. But I am inclined to believe that you are a little off on your racial business Mac, you have

Plaintiffs' Exhibit No. 31—(Continued)

your own feelings, maybe you are correct in feeling bitter towards Mr. Moir from past incidents, but I don't think you should take it out on the rest small fry, after all just like you they working for a living.

A. . . .

Q. I have also been informed from different union men I have interviewed yesterday and this morning, that they have been informed that the strike is far from being settled, is that correct?

A. No.

Q. These individuals have informed me of that?

A. They can read the papers and radio, they are coming down to negotiating.

Q. I mean these they also informed me that the union in Lahaina have informed them also not to believe what they hear over the radio or read in the newspapers?

A. Maybe they were informed, yes.

Q. Don't you think that's poor judgment, also you have enough education to know from the newspapers are truthful and some of them at times may not have true ideas, but as a rule you have found them to be very fair in the past?

A. Well some papers.

291-292-293-294

Statement of Mac Yamauchi Page 17

Q. You also observed ad in the papers on election day, where the ILWU had a full page ad that they were ready to go back to work and settle the

Plaintiffs' Exhibit No. 31—(Continued)

other differences but the sugar industry refused to do that? A. That's right.

Q. Would you say that ad isn't a correct one?

A. I don't know if it's correct, but whatever we have from the office we take but not from the newspaper.

Q. The information you received doesn't it indicate that the strike is just about settled?

A. Well, we didn't have any reports lately.

Q. The main union office in Honolulu haven't been keeping your unit posted?

A. I didn't say that, as far as the information is concerned the industry is setting down not like the way they just started.

Q. Well it seems to me that the men should be informed from time to time as to the results of this negotiation, which would prevent lots of ill feelings or any crimes of violence, don't you think so?

A. That's right.

294-295

Concluded November 7, 1946 at 3:35 p.m.

I have read the foregoing 17 pages of this statement and have had an opportunity to make corrections thereon. I know the contents thereof to be true and correct to the best of my knowledge and belief.

/s/ MAC M. YAMAUCHI.

November 7, 1946 at 7:30 p.m.

Witnessed by:

/s/ [Illegible].

Miss Lewis: What is this you want, Mrs. Bouslog?

Mrs. Bouslog: If you will stipulate that these clippings represent a report of this incident, which shows that in a gambling raid involving 40 people, five police officers were beaten and charges placed against the so-called attackers, alleged attackers, for interfering with police officers in the enforcement of their duty, and that the bail was set at $25 and $50.

Mr. Crockett: If your Honor please——

Judge Biggs: It can be admitted only by stipulation. Do you object?

Mr. Crockett: I do.

Judge Biggs: Sustained.

Mr. Crockett: I don't know a thing about it.

Judge Biggs: Sustained.

Mrs. Bouslog: Then I will ask the Court's permission to show on Saturday, since the report has just come to my attention, that there are other incidents when non-union people are involved in serious difficulties where very minor misdemeanor charges are placed against them.

Judge Biggs: Mrs. Bouslog, I don't believe that you can prove that issue except by going into a very long course of proof. I think that you would have to prove proceedings in the various courts of Hawaii, and it would probably take a very [480] long time. That, of course, is immaterial. The length of time is immaterial. And we are not ruling on that issue. But it seems to me that what you

propose to show is so remote from pertinency that it would not be properly received by this Court.

Mrs. Bouslog: Your Honor, may I be heard?

Judge Biggs: Yes, you may be heard.

Mrs. Bouslog: The plaintiffs' in their petition allege that they are unlawfully, wilfully, and purposely discriminated against because of their membership in the union and because of activities growing out of labor disputes. The defendants' entire case yesterday brought out or asked the officers whether there were any other offenses to their knowledge which would warrant a serious charge. In other words, everybody is peaceful except the persons who engaged in labor disputes. We would like to offer proof of this particular incident because it involves forty people, five people were severely beaten, they were engaged in an unlawful act, in the first place, which certainly is a contrast to the facts which are before your Honors.

Judge Biggs: I think the Court went too far yesterday in allowing the statements of the police officers. We received it subject to a motion to strike. The statements to the effect that Maui was a peaceful place and that there were no incidents prior to these which warranted the employment of this statute. I have very serious doubt as to whether or not that testimony [481] was competent. But it would seem to me that if you are going to proceed to make proof of the actual status of the handling of criminal cases, misdemeanors, in the Territory of Hawaii, that you would have to do it not by proof

of isolated instances, this particular situation, this one to which you refer, but it would have to be more or less done by a presentation of general statistics.

Miss Lewis: If the Court please, I don't know whether the record shows that Mrs. Bouslog is talking about something that happened here in Honolulu.

Judge Biggs: I think it does. She speaks of a raid made by—what is it—the vice squad.

Mrs. Bouslog: Yes, your Honor.

Judge Biggs: On gambling and how it is handled. That is very remote indeed, Mrs. Bouslog. I think that we would not be justified in receiving testimony on that issue. Let me see if my brethren agree with me, however. We think it is too remote, Mrs. Bouslog.

Mrs. Bouslog: Yes, your Honor. Your Honors, subject to the exhibits which have been offered and are to be included, to be supplied as soon as they are available, as soon as we can possibly get them into the records of the Court, we have completed our rebuttal and have completed our case.

Judge Biggs: I might say, in my opinion, speaking only for myself, that the expression of the police officer respecting conditions on Maui is opinion evidence, and is [482] entitled to no more and no less weight than opinion evidence, in case it is actually pertinent. I am not sure that our ruling in respect to this prior matter is proper. It is our opinion that proof of the treatment of isolated instances, the one to which you refer, is not sufficiently close to the

relevant issues in this case to be admissible. I think that probably covers it. I don't know that I can make it any clearer.

Mrs. Bouslog: I understand, your Honor.

Judge Biggs: I beg your pardon?

Mrs. Bouslog: I say I understand what the Court's ruling is, your Honor, and for that reason we are not asking that the Court hear any further witnesses.

Judge Biggs: All right. About the exhibits.

Mrs. Bouslog: What exhibits?

Judge Biggs: I am afraid I didn't follow you. I was thinking about this other matter.

Mrs. Bouslog: The numbers have been reserved for several exhibits, which I believe the defendants have stipulated may go in subject to their objections as to materiality. We understand, of course, that the exhibit only shows what it purports to show, and that they are not bound by it.

Judge Biggs: Any exhibit speaks for itself, to the extent it speaks. We are all familiar with that rule.

Mrs. Bouslog: Yes, your Honor. One of the exhibits [483] which I have is the list of Filipino voters of the County of Maui, which is in the process of preparation. All the exhibits which the defendants have not seen I will turn over to the clerk.

Judge Biggs: Is that course satisfactory?

Miss Lewis: Yes.

Judge Biggs: All of that should be cleared up prior to the argument on Saturday, as far as it can be.

Mrs. Bouslog: So far as it can be.

Judge Biggs: We realize, of course, there is a good deal here. We should like to have everything, as far as possible, in order by Saturday morning, in case there be necessity for it.

Does that complete the taking of testimony in connection with the cases outside of this exhibit to which you refer?

Mrs. Bouslog: Yes.

Mr. Crockett: That is all for the defendants.

Judge Biggs: Very well then. We will hear the argument, as we said yesterday, starting at 10 o'clock Saturday.

Miss Lewis: May I ask the Court.

Judge Biggs: Yes.

Miss Lewis: I think the Court referred to procuring the record. Is the Court ordering the record?

Judge Biggs: I think we should have the record. It may not be ready by that time. I think you can argue, perhaps, [484] without having the record before you.

Miss Lewis: I understood it would not be ready by that time.

Judge Biggs: Are we going to order a record before disposing of the case?

Miss Lewis: I thought the Court said something about a transcript of the record, and I didn't understand. Was that a transcript of all the testimony?

Judge Biggs: We cannot possibly have that by Saturday. What I thought would be the case would be to hear argument from the parties, restricted to the salient, main issues, on Saturday.

Miss Lewis: I understand that, your Honor.

Judge Biggs: And that after the record had been prepared we would then set a time for briefs, with some elasticity. After all, counsel are adult in experience. I don't know that we need to put an actual date on it or not. Mrs. Bouslog's brief would come first, and her request for findings and conclusions. Yours would be second. And then she would have an opportunity for reply brief, and by that time we should have the case ready to be disposed of by this Court.

Perhaps I misunderstood your question. Was your question directed as to who should pay for the record?

Miss Lewis: Yes, your Honor. Who is actually ordering the record?

Judge Biggs: You are going to order a record, aren't [485] you? How are you going to be able to prepare your brief without one?

Miss Lewis: Now that I understand the situation, let us talk to opposing counsel, before we meet again, about it.

Judge Biggs: Very well.

Miss Lewis: That is what I wanted to find out.

Judge Biggs: Very well. The Court would have to have a copy of the record. There are three of us, you know, and five of you. I don't think you can very well get along on one copy of the record. We have no desire to cause the parties or the United States to incur unnecessary expense, but there are limits, after all, which are geographical, you know.

Judge Metzger is here, Judge Harris is in San Francisco, and I am in Wilmington, Delaware, or Philadelphia. You have a rather considerable record here. I must say I can see no reason why the exhibits should be written in as part of the record. They should remain separate. The transcript should embrace the argument and the testimony in the usual way.

Suppose counsel discuss that and you can inform us on Saturday.

Miss Lewis: Yes. Now that I understand the status, we can proceed.

Judge Biggs: Until 10 o'clock on Saturday, then, the Court will stand adjourned.

(April 27, 1948, 11:25 a.m. Court took an adjournment to 10 a.m., Saturday, May 1, 1948.) [486]

[Endorsed]: Filed June 9, 1948 U.S.D.C.

[Endorsed]: Filed July 23, 1948 U.S.C.A.

In the United States District Court for the Territory of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and as Attorney General of the Territory of Hawaii, et al.,
Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., Individually and as Attorney General of the Territory of Hawaii, et al.,
Defendants.

TRANSCRIPT OF PROCEEDINGS

In the above-entitled cases, held in the U. S. District Court on May 1, 1948, at 10:05 o'clock a.m.,
Before: John Biggs, Jr.,
Judge, U. S. Circuit Court, Wilmington, Delaware;
George B. Harris,

Judge, U. S. District Court, San Francisco, California;
Delbert E. Metzger,
Judge, U. S. District Court, Honolulu, T. H.

Appearances:

HARRIET BOUSLOG,
Appearing for Plaintiffs;

MYER C. SYMONDS, ESQ.,
Appearing for Plaintiffs;

RHODA V. LEWIS,
Assistant Attorney General,
Territory of Hawaii,
Appearing for Defendants;

WENDELL F. CROCKETT, ESQ.,
Deputy County Attorney,
County of Maui, T. H.,
Appearing for Defendants.

The Clerk: Civil No. 828, International Longshoremen's and Warehousemen's Union versus Walter D. Ackerman, and Civil No. 836, International Longshoremen's and Warehousemen's Union versus Walter D. Ackerman; cases called for argument.

Judge Biggs: Whenever you are ready.

Mrs. Bouslog: Your Honors, before we begin the argument, there are certain matters in connection with the exhibits and certain matters in connec-

tion with the motion to strike—what is your Honors' pleasure, that they be deferred until after?

Judge Biggs: Well, what we desire today is an argument going to the merits.

Mrs. Bouslog: I understand. But I mean certain very technical and formal matters of clearing up the record on the question of the exhibits.

Judge Biggs: Well, I think you had better proceed to that question first.

Mrs. Bouslog: I have here a letter signed by the Secretary of the Maui Chamber of Commerce, and attached to it a copy of the resolution, which is one of the exhibits which the Plaintiff offered, Exhibit No. 8.

[Exhibit No. 8 is set out on pages 1231 to 1234.]

Judge Biggs: It may be admitted.

Mrs. Bouslog: Also a part of Exhibit No. 8 is a certificate of the Secretary of the Junior Chamber of Commerce which unfortunately has not yet been received, but I will ask the Court for permission to furnish it at a later date after Mr. Crockett has examined it.

Judge Biggs: Very well. It may then be admitted.

Mrs. Bouslog: I also have a certificate of the Treasurer of the Territory of Hawaii that the two provisions of the articles of the Oriental Benevolent Association are the same as those on file.

Judge Biggs: Very well. It may admitted. All

of this, of course, subject to the usual—does the latter thing have a number? I think it does.

Mrs. Bouslog: Yes, Plaintiff's Exhibit No. 30.

Judge Biggs: And No. 30, Mr. Thompson.

Mrs. Bouslog: There was also offered as an exhibit, I believe that was part of Exhibit 18, the Hawaiian Sugar Planters Association, census of Hawaiian sugar plantations as of June 30, 1947. I have procured extra copies so that I have one for each member of the Court, if the Court so desires.

Judge Biggs: Very well. We will be glad to have it.

The Clerk: Plaintiffs' Exhibit No. 32.

(The document referred to was received in evidence as "Plaintiffs' Exhibit No. 32.")

[Printer's Note]: Exhibit 32 set out beginning on page 1740 was previously marked Exhibit 30.

Judge Biggs: Will you just pass them up, please?

Mrs. Bouslog: Now, Plaintiffs' Exhibit 22. I believe there were two parts of 22. The first was a certificate of [2*] the Clerk of Maui County showing the number of registered Filipino voters. Plaintiff also asks permission to file a list of Filipino, actual names of Filipino registered voters. Here is Plaintiffs' Exhibit No. 22-B. Mr. Crockett has not yet had a chance to examine it. It is a list of Filipino voters checked on the actual register of voters of Maui County.

Judge Biggs: So it actually shows them to be members of Filipino nationality?

*** Page numbering appearing at top of page of original certified Transcript of Record.**

Mrs. Bouslog: No, your Honor. It shows that there are two parts. One, persons definitely known to be Filipino; another, a question mark showing that they probably are. Mr. Crockett, do you want to——

Judge Biggs: Let Mr. Crockett examine it, please. (Mrs. Bouslog hands a large envelope to Mr. Crockett.)

Mrs. Bouslog: Now, your Honors, I discovered that in the showing no number was assigned to the Plaintiff's films, no exhibit number. I suggest that you assign to them Exhibit No. 32.

Judge Biggs: That would be the last number.

The Clerk: Exhibit No. 33.

(The films referred to were received in evidence as "Plaintiffs' Exhibit No. 33.")

Mrs. Bouslog: What was 32?

The Clerk. The extra sheet.

Mrs. Bouslog: I see. [3]

Judge Biggs: All the exhibits can be checked at some future time, and if there are any extra numbers, why it is easy to clear it up.

Mrs. Bouslog: I might say in respect to the transcript of the record before the Maui Circuit Court on the Grand Jury challenge that there is at present only one copy of that transcript in the record. I think that after briefs are submitted and proposed findings of fact that the parties can lend to the Court so that each Court will have a copy——

Judge Biggs: I think that one copy will be sufficient.

Mrs. Bouslog: I have in the process of preparation, and I will furnish the Defendants and furnish the Court, if they have no objection, with a complete index, paged index of the transcript. It is not now indexed. I think it will facilitate Counsel's work, as well as the Court's work. It has been made up but it has not yet been typed.

Judge Biggs: Is that all, Mrs. Bouslog?

Mrs. Bouslog: I think that's all.

Judge Biggs: All right. Miss Lewis?

Miss Lewis: I have a further matter pertaining to exhibits, if the Court would hear me.

Judge Biggs: Yes.

Miss Lewis: Exhibit 25 of the Plaintiff—all of the exhibits on the Grand Jury challenging—I think there was a little misunderstanding and this is just a matter of clearing [4] the record. On looking through the exhibits I noticed some that were merely marked in Judge Cristy's proceeding for identification but not received. They were included there. And I want the record to show that we have an additional objection, that is, to the general objections made at the beginning of the proceedings, to those exhibits that were merely marked for identification. They are irrelevant, immaterial, and I can name them off if the Court wishes.

Judge Biggs: Will it appear on the exhibit as admitted here that the particular paper or document or whatever it was that it was simply marked for identification before Judge Cristy?

Miss Lewis: Yes, it will. The system there is

that they use one tag for identification and another tag when it is received.

Judge Biggs: I see. Well, then, I doubt if you need to read it into the record. If you will put your list, if you have your list there, you may hand it to the Clerk and the Clerk will mark it part of the record by incorporation.

Miss Lewis: Very well. Another matter that possibly needs attention is that the Prosecution's exhibits in that Grand Jury challenge were produced by Mr. Cockett and the Plaintiff called him and marked for identification 14 and 16. And I find they have been introduced under Plaintiffs' numbers, actually, that is to say, marked under Plaintiffs' numbers. [5] Actually, of course, those are Defendants' exhibits. I submit that it would be better if they were given Defendants' exhibit numbers.

Judge Biggs: It seems to me that would be the case. Have you any comment, Mrs. Bouslog?

Mrs. Bouslog: Except, your Honor, the Plaintiff offered and intended to put into the record the complete records before Judge Cristy, which would, of course, include the Court's exhibits and the Defendant's exhibits. And that is the reason why we offer the whole record. It makes no difference.

Judge Biggs: I suggest that those particular items be marked as the Court's exhibits. We will assume responsibility for them.

Miss Lewis: That would be what has been marked Plaintiffs' Exhibit 14 and Plaintiffs' Exhibit 16.

Judge Biggs: It would be "C-1" and "C-2."

Miss Lewis: Pardon?

Judge Biggs: It would be the Court's 1 and 2.

(The documents previously marked "Plaintiffs' Exhibits 14 and 16 were re-marked as Court's Exhibits 1 and 2.")

COURT'S EXHIBIT No. 1

In the Circuit Court of the Second Circuit, Territory of Hawaii—At Chambers

In the Matter of Selecting Lists of Persons To Serve as Jurors During the Year A. D., 1947

REPORT OF THE JURY COMMISSIONERS, AND LISTS OF NAMES OF PERSONS SELECTED TO SERVE AS JURORS IN AND FOR THE SECOND CIRCUIT OF THE TERRITORY OF HAWAII FOR THE YEAR A. D., 1947

To the Honorable Cable A. Wirtz, Judge of the Circuit Court of the Second Circuit, Territory of Hawaii:

We, the undersigned Jury Commissioners, appointed by Your Honor on the 18th day of June, A. D., 1946, to select and list the names of persons to serve as Jurors in the Circuit Court of the Second Circuit, Territory of Hawaii, for the year, A. D., 1947, beg leave to report as follows:

That between the 18th day of June, A. D., 1946, and the 12th day of December, A. D., 1946, we

proceeded to select and list from the citizens, voters and residents of the several precincts in the said Circuit, the names of fifty (50) persons who, in our opinions, are qualified to serve as Grand Jurors, and the names of One Hundred (100) persons who are so qualified to serve as Trial Jurors, as required by law; that we have not, except where it was necessary, selected and listed the name of any person who has served as a Juror within one year; and that the names of such persons selected and listed and so qualified to serve as Grand and Trial Jurors, as aforesaid, are as follows:

GRAND JURORS

No.	Name	Precinct	Residence
1.	David P. Eldredge	1	Lanai
2.	Toshio Onuma	1	Lanai
3.	Alfred S. Burns	2	Honolua
4.	Manuel Correia, Jr.	3	Mala
5.	Roy Tatsumi Ito	3	Mala
6.	Edward S. Bowmer	3	Mala
7.	Ralph O. Cornwell	4	Kam 4th, Lahaina
8.	Yong Kam Chew	4	Kam 4th, Lahaina
9.	Ray M. Allen	6	Wailuku Elementary
10.	Wai Ken Tom	6	Wailuku Elementary
11.	Allan H. Ezell	6	Wailuku Elementary
12.	Louis Sequeira	7	Iao School
13.	Winford W. Percy	7	Iao School
14.	Shosaku Nakamoto	7	Iao School
15.	Irving Maeda	8	Piihana
16.	Joseph H. Trask	8	Piihana
17.	Ernest Rezents	8	Piihana
18.	Eugene K. Ayers	9	Papohaku
19.	Paul A. Haygood	9	Papohaku
20.	Charles H. Saka	10	Waihee
21.	Glenn H. Fredholm	12	Kahului
22.	H. S. Peterson	12	Kahului
23.	Manuel De Ponte	12	Kahului
24.	Frank W. Broadbent	13	Puunene
25.	Masao Mac Ajifu	13	Puunene
26.	Mau Hin Edward Alu	13	Puunene
27.	Jack Costa	13	Puunene

GRAND JURORS (Continued)

No.	Name	Precinct	Residence
29.	E. Stanley Elmore	13	Puunene
28.	James M. Fleming	14	Spreckelsville
30.	Albert D. Waterhouse	15	Lower Paia
31.	Manuel Feiteira	15	Lower Paia
32.	Andrew Moodie	16	Upper Paia
33.	Robert P. Bruce	16	Upper Paia
34.	H. W. English	16	Upper Paia
35.	Gottlieb Z. Coleman	16	Upper Paia
36.	Edmund Nunes	17	Upper Paia
37.	Richard H. Baldwin	18	Makawao
38.	Anthony A. Tam	18	Makawao
39.	Walter W. Holt	19	Haiku
40.	Edwin K. Muroki	19	Haiku
41.	John Plunkett	21	Keanae
42.	Albert G. Simpson	23	Hana
43.	Edward H. Baldwin	26	Honuaula
44.	Henry S. S. Fong	27	Keokea
45.	Charles Goodness	27	Keokea
46.	Charles E. Thompson	28	Kihei
47.	Stanley C. Friel	30	Pukoo
48.	Charles E. Morris	31	Kaunakakai
49.	Kenneth Auld	32	Hoolehua
50.	Paul R. Reinhart	33	Maunaloa

TRIAL JURORS

No.	Name	Precinct	Residence
1.	C. M. Marques	1	Lanai
2.	Rudolph A. Y. Wong	1	Lanai
3.	Henry B. Caldwell	1	Lanai
4.	Henry K. Goshi	1	Lanai
5.	Joseph A. Verret	1	Lanai
6.	David A. Fleming	2	Honolua
7.	Francis K. Izumi	3	Mala
8.	John Nedermeyer	3	Mala
9.	Charles W. Ashdown	3	Mala
10.	Marion Soares	3	Mala
11.	Masaki Nakamura	3	Mala
12.	Bruce L. Fleming	3	Mala
13.	Samuel Akana	4	Kam 4th, Lahaina
14.	George Allan Freeland	4	Kam 4th, Lahaina
15.	Paul F. Hirashima	4	Kam 4th, Lahaina
16.	Jack E. Vockrodt (4)	4	Kam 4th Lahaina
17.	Kwai Goo	5	Olowalu
18.	Albert Rego	6	Wailuku Elementary
19.	Herbert A. Hjorth	6	Wailuku Elementary

TRIAL JURORS (Continued)

No.	Name	Precinct	Residence
20.	John Nunes	6	Wailuku Elementary
21.	John Denison Jenkins	6	Wailuku Elementary
22.	James T. Murakami	6	Wailuku Elementary
23.	Ernest G. Paschoal	7	Iao School
24.	Theodore C. Harris	7	Iao School
25.	Andrew Pestana	7	Iao School
26.	E. H. Takakura	7	Iao School
27.	John G. Duarte	7	Iao School
28.	Herbert H. Chung	7	Iao School
29.	Norman H. Buxton	7	Iao School
30.	Frank Dolim	8	Piihana
31.	Howard Barrows	8	Piihana
32.	Bernard H. Tokunaga	8	Piihana
33.	Donald H. Tokunaga	8	Piihana
34.	Manuel C. Ferreira	8	Piihana
35.	Walter Young	8	Piihana
36.	Donald J. Huxtable	9	Papohaku
37.	Charles L. Clark	9	Papohaku
38.	Shigeru Hamasaki	9	Papohaku
39.	Kaneo Kishimoto	10	Waihee
40.	George N. Paresa	10	Waihee
41.	Lot Carey Lane (10)	11	Kahakuloa
42.	Robert L. Wood	12	Kahului
43.	Donald Dease	12	Kahului
44.	Felix C. Osorno	12	Kahului
45.	Herbert Y. Sameshima	12	Kahului
46.	William Bissen	12	Kahului
47.	Wilbur K. Watkins, Jr.	13	Puunene
48.	William Harvey	13	Puunene
49.	Kokuichi Omura	13	Puunene
50.	Charles C. Young (7)	13	Puunene
51.	Harry F. M. Dove (7)	13	Puunene
52.	E. L. Harker (27)	13	Puunene
53.	Frank Munoz (7)	13	Puunene
54.	Herbert Rodrigues (6)	13	Puunene
55.	Robt. G. von Tempsky, Jr. (7)	13	Puunene
56.	William Lanquist	14	Spreckelsville
57.	William S. K. Brandt	14	Spreckelsville
58.	Russell W. Pinfold (7)	14	Spreckelsville
59.	Nobuichi Kobayashi	15	Lower Paia
60.	Charles Cramer	15	Lower Paia
61.	Francis M. Takakura	15	Lower Paia
62.	Benjamin J. Ambrose	15	Lower Paia
63.	G. N. T. Enemoto	16	Upper Paia
64.	James K. Nashiwa	16	Upper Paia
65.	Tony Molina	16	Upper Paia
66.	William H. Hoomalu	16	Upper Paia

TRIAL JURORS (Continued)

No.	Name	Precinct	Residence
67.	John P. Perreira	16	Upper Paia
68.	Benjamin M. Ambrose	16	Upper Paia
69.	Sevath E. Boyum	16	Upper Paia
70.	John Bak, Jr.	17	Keahua
71.	Charles Y. Arakaki	17	Keahua
72.	Charles F. A. Du Bois	18	Makawao
73.	E. J. Allencastre	18	Makawao
74.	William H. Amaral	18	Makawao
75.	Masao Higa	18	Makawao
76.	Charles S. L. Awai	19	Haiku
77.	Emil Davis	19	Haiku
78.	Eugene Rodrigues	19	Haiku
79.	Fred Wilhelm	20	Huelo
80.	Eugene F. Ching	21	Keanae
81.	John K. Awai, Jr.	22	Nahiku
82.	Clifford E. Clark	23	Hana
83.	Yoshio Okada	23	Hana
84.	Yoshimi Uchiyama	24	Kipahula
85.	Henry Gibson	25	Kaupo
86.	Edmund Brown	26	Honuaula
87.	Fred A. Russell, Jr.	27	Keokea
88.	Robert G. von Tempsky	27	Keokea
89.	Ernest J. Morton	27	Keokea
90.	Clarence K. Y. Wong	27	Keokea
91.	Takeshi Tanabe	28	Kihei
92.	L. Kiha Kaalouahi	29	Halawa
93.	Gilbert W. Anderson	30	Pukoo
94.	Wallace C. Aping	30	Pukoo
95.	Melvin McGuire	31	Kaunakakai
96.	Wilfred H. Paul	31	Kaunakakai
97.	Manuel A. Gonsalves	31	Kaunakakai
98.	Ernest P. Elia	32	Hoolehua
99.	Edward En Fo Leong	32	Hoolehua
100.	Peter M. Fitzgerald	33	Maunaloa

Territory of Hawaii,
County of Maui,
District of Wailuku—ss.

We Hereby Certify that the foregoing are true and correct lists of the names of persons selected by us from the citizens, voters and residents of the several precincts of the Second Circuit of the Ter-

ritory of Hawaii in and for the year A.D. 1947; and that the same are persons believed to be qualified to act and serve as such Jurors, and that such selections were made pursuant to law; Your Honor, as Judge of the Circuit Court of this Circuit, constituting one of our Commissioners and joining with us in the selection and listing of the foregoing persons as Jurors.

[Seal] /s/ CLAUDE E. CHATTERTON,
Jury Commissioner.

/s/ AUGUSTINE POMBO,
Jury Commissioner.

Subscribed and sworn to before me this 16th day of December, A.D. 1946.

/s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

Territory of Hawaii,
County of Maui,
District of Wailuku—ss.

I, Cable A. Wirtz, Do Hereby Certify that, as Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, and pursuant to law, together with Claude E. Chatterton and Augustine Pombo, Jury Commissioners, I participated in choosing and listing the foregoing named persons as Grand and Trial Jurors for the Year (Term) 1947.

I Further Certify that the foregoing are true and

correct lists of the names of persons selected by us from the citizens, voters and residents of the several precincts of the Second Circuit of the Territory of Hawaii in and for the year 1947; and that the same are persons believed to be qualified to act as such Jurors; and that such selection and listing was made pursuant to law.

/s/ CABLE A. WIRTZ.

Subscribed and sworn to before me this 17th day of December, A.D., 1946.

/s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

Filed Dec. 17, 1946.

/s/ JOHN V. COCKETT,
Clerk, Second Circuit Court.

CLERK'S MINUTES

Jurors, Grand—Drawing of December 27th, 1946

In the Matter of
The Drawing of Grand Jurors to Serve During the A.D. 1947 Term.

At Term: Friday, December 27th, 1946, at 10:00 a.m.

Present: Hon. Cable A. Wirtz, Judge Presiding.
D. W. Tallant, Deputy Clerk.
Ivy W. Parks, Court Reporter.
Lyons K. Naone, Jr., Bailiff.

ritory of Hawaii in and for the year A.D. 1947; and that the same are persons believed to be qualified to act and serve as such Jurors, and that such selections were made pursuant to law; Your Honor, as Judge of the Circuit Court of this Circuit, constituting one of our Commissioners and joining with us in the selection and listing of the foregoing persons as Jurors.

[Seal] /s/ CLAUDE E. CHATTERTON,
Jury Commissioner.

/s/ AUGUSTINE POMBO,
Jury Commissioner.

Subscribed and sworn to before me this 16th day of December, A.D. 1946.

/s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

Territory of Hawaii,
County of Maui,
District of Wailuku—ss.

I, Cable A. Wirtz, Do Hereby Certify that, as Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, and pursuant to law, together with Claude E. Chatterton and Augustine Pombo, Jury Commissioners, I participated in choosing and listing the foregoing named persons as Grand and Trial Jurors for the Year (Term) 1947.

I Further Certify that the foregoing are true and

correct lists of the names of persons selected by us from the citizens, voters and residents of the several precincts of the Second Circuit of the Territory of Hawaii in and for the year 1947; and that the same are persons believed to be qualified to act as such Jurors; and that such selection and listing was made pursuant to law.

/s/ CABLE A. WIRTZ.

Subscribed and sworn to before me this 17th day of December, A.D., 1946.

/s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

Filed Dec. 17, 1946.

/s/ JOHN V. COCKETT,
Clerk, Second Circuit Court.

CLERK'S MINUTES

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D. W. Tallant, Deputy Clerk.
Ivy W. Parks, Court Reporter.
Lyons K. Naone, Jr., Bailiff.

Counsel: Wendell F. Crockett, Esq.,
Deputy County Attorney for the Territory.
Enos Vincent, Esquire.
Harold L. Duponte, Esquire.

Drawing of Grand Jurors

By Order of Court, the Clerk, after first shaking up the Grand Jury Box containing the names of Fifty (50) persons as Grand Jurors selected by the Jury Commissioners, draws therefrom the names of twenty-three (23) Grand Jurors, viz:

No.	List No.	Names
1.	11	Allan H. Ezell
2.	49	Kenneth Auld
3.	38	Anthony A. Tam
4.	43	Edward H. Baldwin
5.	45	Charles Goodness
6.	44	Henry S. S. Fong
7.	13	Winford W. Percy
8.	37	Richard H. Baldwin
9.	29	E. Stanley Elmore
10.	27	Jack Costa
11.	50	Paul H. Reinhart
12.	22	H. S. Peterson
13.	39	Walter W. Holt
14.	7	Ralph O. Cornwell
15.	41	John Plunkett
16.	10	Wai Ken Tom
17.	33	Robert P. Bruce
18.	3	Alfred S. Burns
19.	16	Joseph H. Trask
20.	6	Edward S. Bowmer
21.	25	Masao Mac Ajifu
22.	46	Charles E. Thompson
23.	15	Irving Maeda

No challenges having been made by Counsel, the Court announced that the names just drawn con-

stitute the Grand Jury Panel for the A.D. 1947 Term.

/s/ D. W. TALLANT,
Deputy Clerk.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Sept. 16th, A.D. 1947.

JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

Admitted.

In the Circuit Court of the Second Circuit
Territory of Hawaii

In the matter of the persons drawn to serve and act as Trial Jurors in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, during the A.D. 1947 Term, before the Honorable Cable A. Wirtz, Judge.

I, the undersigned, Judge of the Circuit Court of the Second Judicial Circuit, do hereby certify that on Friday, the 27th day of December, A.D. 1946, and in public, to wit: the Court Room of said Circuit Court, in the Court House, at Wailuku, Maui, Territory of Hawaii, D. W. Tallant, Deputy Clerk of said Circuit Court, at my direction and in my presence, after first shaking the Jury Box containing the names deposited therein (being the box

wherein the names of persons, heretofore selected by the Jury Commissioners of said Circuit Court to serve and act as Trial Jurors in the Circuit Court of the Second Judicial Circuit, of the Territory, for the year A.D. 1947, were duly deposited), so as to thoroughly mix the pieces of paper upon which such names were and are written, did draw therefrom, by lot, the names of Twenty-Six (26) persons to serve and act as Trial Jurors at the A.D. 1947, Term of said Court, to be and appear before the said Circuit Court of the Second Judicial Circuit of the said Territory, on .... day, the .... day of ....., A.D. 19.., at .... o'clock in the..... noon of said day:

That the names of the persons so drawn to serve and act as Trial Jurors, as aforesaid, are as follows:

1. William S. K. Brandt
2. Charles Y. Arakaki
3. Walter Young
4. Donald J. Huxtable
5. Masao Higa
6. James T. Murakami
7. Benjamin J. Ambrose
8. James K. Nashiwa
9. Frank Dolim
10. Charles S. L. Awai
11. E. J. Allencastre
12. John Nunes
13. John Nedermeyer
14. Charles C. Young
15. Peter M. Fitzgerald

16. Fred A. Russell, Jr.
17. Kokuichi Omura
18. Tony Molina
19. Eugene F. Ching
20. Takeshi Tanabe
21. Henry Gibson
22. L. Kiha Kaalouahi
23. John G. Duarte
24. Gilbert W. Anderson
25. Paul F. Hirashima
26. Henry B. Caldwell

I do further certify that the foregoing is a true and correct list of the persons so drawn as aforesaid, by said Clerk, in my presence, to serve and act as Trial Jurors in the Circuit Court and during the Term aforesaid, and that said drawing was open and in public; notice of said drawing having been duly advertised in the Maui News, a newspaper printed and published in Wailuku, Maui, in its issues of December 18th and December 25th, 1946.

Witness, my hand and the Seal of the Circuit Court of the Second Judicial Circuit, at Wailuku, County of Maui, Territory of Hawaii, this 27th day of December, 1946.

/s/ CABLE A. WIRTZ,
Judge of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii.

Attest:

[Seal] /s/ D. W. TALLANT,
Deputy Clerk of the Circuit Court of the Second Circuit.

Here insert notice of publication of such time and place, if any made, and in what newspaper.—See amendment to Sec. 1779, Rev. L., p. 170, Lews 1905.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Sept. 13th, A.D. 1947.

/s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

In the Circuit Court of the Second Circuit
Territory of Hawaii

In the matter of the persons drawn to serve and act as Grand Jurors in the Circuit Court of the Second Judicial Circuit, Territory of Hawaii, during the A.D. 1947 Term, before the Honorable Cable A. Wirtz, Judge.

I, the undersigned, Judge of the Circuit Court of the Second Judicial Circuit, do hereby certify that on Friday, the 27th day of December, A.D. 1946, and in public, to wit: the Court Room of said Circuit Court, in the Court House, at Wailuku, Maui, Territory of Hawaii, D. W. Tallant, Deputy Clerk of said Circuit Court, at my direction and in my presence, after first shaking the Jury Box containing the names deposited therein (being the box wherein the names of persons, heretofore selected by the Jury Commissioners of said Circuit Court

to serve and act as Grand Jurors in the Circuit Court of the Second Judicial Circuit, of the Territory, for the year A.D. 1947, were duly deposited), so as to thoroughly mix the pieces of paper upon which such names were and are written, did draw therefrom, by lot, the names of Twenty-Three (23) persons to serve and act as Grand Jurors at the A.D. 1947, Term of said Court, to be and appear before the said Circuit Court of the Second Judicial Circuit of the said Territory, on .... day, the .... day of ....., A.D. 19.., at .... o'clock in the .... noon of said day:

That the names of the persons so drawn to serve and act as Grand Jurors, as aforesaid, are as follows:

1. Allan H. Ezell
2. Kenneth Auld
3. Anthony A. Tam
4. Edward H. Baldwin
5. Charles Goodness
6. Henry S. S. Fong
7. Winford W. Percy
8. Richard H. Baldwin
9. E. Stanley Elmore
10. Jack Costa
11. Paul H. Reinhart
12. H. S. Peterson
13. Walter W. Holt
14. Ralph O. Cornwell
15. John Plunkett

16. Wai Ken Tom
17. Robert P. Bruce
18. Alfred S. Burns
19. Joseph H. Trask
20. Edward S. Bowmer
21. Masao Mac Ajifu
22. Charles E. Thompson
23. Irving Maeda

I do further certify that the foregoing is a true and correct list of the persons so drawn as aforesaid, by said Clerk, in my presence, to serve and act as Grand Jurors in the Circuit Court and during the Term aforesaid, and that said drawing was open and in public; notice of said drawing having been duly advertised in the Maui News, a newspaper printed and published in Wailuku, Maui, in its issues of December 18th, and December 25th, 1946.

Witness, my hand and the Seal of the Circuit Court of the Second Judicial Circuit, at Wailuku, County of Maui, Territory of Hawaii, this 27th day of December, 1946.

/s/ CABLE A. WIRTZ,
Judge of the Circuit Court of the Second Judicial Circuit, Territory of Hawaii.

Attest:

[Seal] /s/ D. W. TALLANT,
Deputy Clerk of the Circuit Court of the Second Circuit.

Here insert notice of publication of such time and place, if any made, and in what newspaper.—See

amendment to Sec. 1779, Rev. L., p. 170, Lews 1905.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Sept. 13th, A.D. 1947.

/s/ JOHN V. COCKETT,
Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

COURT'S EXHIBIT No. 2

In the Circuit Court of the Second Circuit
Territory of Hawaii

Criminal Nos. 2412-2413

TERRITORY OF HAWAII
vs.
ABRAHAM MAKEKAU, et al. and DIEGO BARBOSA, et al.

Prosecution's Exhibit D

CHARGE TO THE GRAND JURY

You have been called here, Gentlemen, for a very important duty and service, you have been impanelled and sworn as Grand Jurors of the Circuit Court of the Second Circuit, Territory of Hawaii, for the balance of the January Term 1947 of this Court. You have come here from different parts of this Circuit, from different walks of life, and

Exhibit No. 2—(Continued)

have been certified as men qualified to perform the exacting duties which the Law demands of you as Grand Jurors. The duties with which you are charged are of the highest importance in the administration of justice, and are some of the most exacting entrusted to citizens of the United States of America.

You, as citizens of the Territory of Hawaii, owe to it this service which you have been called upon to render; this is a duty which you should not shirk and is one which you should willingly perform. Without this sacrifice and service of its citizens, the Laws of the Territory of Hawaii could not be enforced, and without our law enforcement our lives and property would not be secure.

Your duty in general is to consider matters which are submitted to you, and to see that proper accusations are made against those who violate our laws, and to guard the innocent against false accusation.

It is provided by Section 9810 of the Revised Laws of Hawaii, 1945, that the Judge of the Circuit Court of the Second Circuit, Territory of Hawaii, may order a Grand Jury to be summoned to sit at such times as the Court may direct. Pursuant to this authorization, I have ordered you—the Grand Jury—to be summoned into session for since the last meeting of the Grand Jury in this Circuit, many matters have arisen which require your consideration.

Let me say here, so that there may be no misun-

Exhibit No. 2—(Continued)

derstanding on this point in the future, that you constitute a Grand Jury when and only when you have been called into session by this Court. Unless duly convened by the direction of the Court you, both as individuals and as a group, are entirely powerless to function as an official body. Accordingly, you will hereafter meet only for sessions of which you have been officially notified, after a written order has been made by the Court or upon an order given to you in open Court.

As you will recall, by the Constitution of the United States no person can be held to answer for a capital or otherwise infamous crime except upon a presentment or indictment of a Grand Jury, save in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. This constitutional provision, of course, applies to and is in full force and effect within the Territory of Hawaii.

No steps, therefore, can be taken to the exceptions above mentioned for the prosecution of any crime on an infamous character (and under this designation the whole series of felonies is classed) beyond the arrest, examination and commitment of the party accused, until the Grand Jury have deliberated and acted upon the accusation.

You thus see, Gentlemen, that your functions are not only important, as I have already stated, but indispensable to the administration of criminal justice.

The institution of the Grand Jury is centuries

Exhibit No. 2—(Continued)

old in the history of England from which country comes most of our ccmmon law, which is the unwritten law of the land. For a long period its powers were not clearly defined. At first it was a body which not only accused but also tried public offenders. It underwent many changes both in form and substance in the course of time. In the struggles which arose in England between the powers of the King and the rights of his subjects, it often stood as a barrier against prosecution in the King's name, until, at length, it came to be regarded as an institution by which the subject was rendered secure against oppression from unfounded prosecution of the crown.

At the time of the adoption of our Constitution it had become what it is today—an informing and accusing tribunal only, without whose action no person charged with a felony could, except in certain special cases, be put to trial.

The institution of the Grand Jury was adopted in the United States and has continued by Constitutional provision from consideration similar to those which gave to it its chief value in England. It is designed as a means not only of bringing to trial persons accused of crime upon just grounds, but also as a means of protecting the citizen against unfounded accusation, whether it comes from the Government or whether it be prompted by partisan passion or private enmity.

It is our Fundamental Law that no person, unless

Exhibit No. 2—(Continued)

he be in the military or naval services, shall be required to answer for any of the higher crimes unless this body, constituted of not less than 13 nor more than 23 good and lawful men, selected in the manner prescribed by law, shall declare upon careful deliberation under the solemnity of an oath, that there is good and sound reason for his or her accusation and trial.

Upon you, Gentlemen, there is cast a double duty; one, a duty to the Government, or, more properly speaking, to society, to see to it that parties against whom there is just ground to charge the commission of crime, shall be held to answer the charge; and, on the other hand, a duty to the citizen to see that he is not subjected to prosecution upon accusations having no better foundation than public clamor or private malice.

The Government is represented by its Prosecuting Officer, the County Attorney, or his Deputy. He prosecutes the parties charged with the commission, within this County, of criminal offenses against the penal Laws of the Territory of Hawaii. The Prosecuting Officer will appear before you and present the accusations which the Government may desire to have considered by you. He will assist you in the examination of witnesses. He will also advise you as to the laws charged to have been violated and will see to the issuance and service of process to secure the attendance of such witnesses, and the production of such evidence, as may be nec-

Exhibit No. 2—(Continued)

essary for the proper discharge of your duties. He shall also draw such indictments as you may direct. He shall not give you advice as to the sufficiency or insufficiency of the evidence in any matter, nor in any way seek to influence you to find or not to find any indictment or to take part in any of your deliberations, these matters being wholly within your exclusive province.

Any or all of you may, of course, directly question witnesses appearing before your body. You have the right to direct witnesses to answer all proper questions about the offense being investigated, but you may not require anyone to give evidence against himself or to answer any questions the answers to which would subject him to criminal prosecution. In the event you have a witness before you whom you suspect may have been guilty of some offense in connection with the matter under investigation, you should inform the witness of his right to refuse to answer, if his answer might tend to incriminate him. If any witness summoned before you refuses to answer any question propounded and you believe that he should be required to answer, you should report the matter to the Court, stating, in writing, the question asked and the reason, if any, given by the witness for refusing to answer. If the witness should be required to answer, the Court will assist you in compelling him to do so or in taking such action as may appear to be just and proper in the premises. This is a question of law to be decided by the Court alone.

Exhibit No. 2—(Continued)

In your investigations you will receive only legal evidence to the exclusion of mere reports, suspicions and heresay evidence. Subject to this qualification, you will receive all the evidence presented which may throw light upon the matter under consideration, whether it tends to establish the innocence or guilt of the accused.

And further if, in the course of your inquiries, you have reason to believe that there is other evidence not presented to you but which is within your reach and which would qualify or explain away the charge under investigation, it will be your duty to order such evidence to be produced.

With regard to the amount of evidence required to warrant your presenting or indicting a person, you are advised as follows: As Grand Jurors you will hear only one side of the case—the Government's side—and, at no time, will the accused person or persons appear before you and give his or their side of the case. After hearing all the Government has presented, you should keep one and only one thought in mind, and, that is, if you were sitting as a Trial Juror would you acquit or convict on the basis of the testimony which you have heard unexplained and uncontradicted? If you believe you would convict, you should return a "True Bill" or an indictment. If not, you should and it is your duty to return a "No Bill" or no indictment.

In order to justify your returning an indictment or the making of a presentment, you should be convinced that the evidence before you, unexplained

Exhibit No. 2—(Continued)

and uncontradicted, would warrant a conviction by a Trial Jury. You should bear in mind that you are not here to try cases, nor are you here to be convinced beyond a reasonable doubt of the guilt of the accused, but you are here simply to weigh the Government's evidence as given to you and to decide if there is sufficient evidence to warrant the case coming before a Trial Jury.

Do not let your private opinions upon a matter or outside interests prejudice your finding. Accept what you hear from the witnesses, and if you do not believe the Government has sufficient evidence, it is your duty to say so and to return a "No Bill." If, on the other hand, you believe from the unexplained and uncontradicted evidence which the Government has presented to you that the accused should be brought to trial and given an opportunity to explain his side of the case to a body of 12 Trial Jurors, it is your duty to return an indictment.

Your duties, Gentlemen, are substantially those pointed out in the Oath which has just been administered to you by the Clerk. May I indicate some of the very important parts of your Oath?

First: It is provided that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge, or shall otherwise come to your knowledge touching this present service.

Second: That you will present no one through envy, hatred or malice.

Third: That you shall leave no one unpresented

Exhibit No. 2—(Continued)

through fear, favor, affection, gain, reward, or hope therefor, but will present all things truly as they come to your knowledge according to the best of your understanding; and

Fourth: That you shall keep secret the proceedings had before you.

There are two terms used in this Oath which you have taken as to which a few words of explanation may be helpful. I refer to the words "indictment" and "presentment." An "indictment" is a written accusation of a crime drawn up by the prosecuting officer and submitted to the Grand Jury and found by it and returned upon oath as a "True Bill." A "presentment" is an informal accusation of a crime made by a Grand Jury on the basis of its own knowledge or observation, or upon its own motion upon information from others, without any bill of indictment having been submitted to it by the prosecuting officer. It is, in essence, an instruction by the Grand Jury to the prosecuting officer for the framing of an indictment which, upon being prepared by him, is submitted to the Grand Jury and found to be a "True Bill."

One of the essential purposes of an indictment or presentment is fairly to inform the accused of the charge which has been preferred against him by the Grand Jury so as to enable him to prepare his defense.

As an informing and accusing body, Gentlemen, your powers of investigation are limited to criminal

Exhibit No. 2—(Continued)

matters and within this realm to the returning of indictments or presentments. You are limited in this regard, first, to matters to which your attention may have been called by the Court; second, to matters which have been submitted to you for your consideration by the prosecuting officer; third, to matters which come to your knowledge in the course of your investigations into other matters brought before you or from your own observations; and, fourth, to matters which come to your knowledge from the disclosure of your fellow members under oath.

As a Grand Jury you have rather broad powers exercisable upon your own volition to investigate crimes. You may act upon the testimony of one of your members under oath, or on the personal knowledge of any one of your members communicated to you under no other sanction than his oath as a Grand Juror. This knowledge of your member may be acquired from any source. Such knowledge must, however, be direct knowledge or knowledge gained from a reliable source.

You are not, however, at liberty to use this broad power of investigation for the purpose of conducting a speculative inquiry founded upon rumor or suspicion, or the mere chance that some crime may be discovered; nor are you to use this power to accomplish some ulterior purpose. The inquisitorial power you have is limited by your oath, which prohibits you from presenting any man through envy, hatred or malice, and by the Bill of Rights prohibit-

Exhibit No. 2—(Continued)

ing unreasonable searches and seizures. Before instituting an investigation of your own, you must first have probable cause to believe that a crime has been committed and reasonable grounds for believing that a particular person or persons committed that crime.

Your resort to your independent powers of investigation you will find will be the exception rather than the rule, for you will soon discover that by the ordinary processes of the law most, if not all, felonies are discovered and brought to your attention. In general, therefor, you will find it necessary to use this independent power of investigation only in regard to criminal action which the ordinary processes of law are unable to cope with or discover, and which affect or injure the public generally, and if permitted to continue would endanger the public safety or health, demoralize the personal security of the members of the public, or permit systematic depredation by public officers.

Under the Laws of our Territory there is no crime other than as prescribed by statute. There are, in general, two types or crimes, namely, felonies and misdemeanors. A felony is a crime for which the prescribed punishment is imprisonment for more than one year. A misdemeanor is a crime punishable by imprisonment for a period of a year or less than a year.

You are essentially concerned with cases involving felonies. You may, however, at the prosecuting

Exhibit No. 2—(Continued)

officer's request, or even upon your own initiative, consider certain misdemeanor cases of the type which are cognizable by a Grand Jury at common law. However, you will find by experience that as the regular processes of law adequately take care of misdemeanors and that as felony cases will consume your time, about the only misdemeanor cases which you will want to consider will be those as to which the prosecuting officer for some special reason desires your approval, before prosecution.

While serving as Grand Jurors you may meet with people who act in the capacity of private prosecutors. Territorial Law provides the people with a public prosecutor, the County Attorney. Generally, although not necessarily, all matters should be presented either to a District Magistrate or to the County Attorney to pass upon before they are presented to the Grand Jury. Persons who write letters to the Grand Jury or who appear before the Grand Jury with some complaint which they have not seen fit to present before a District Magistrate or to the County Attorney usually have motives of their own, and you, as Grand Jurors, should weigh very carefully statements of those private prosecutors before any indictments desired by them are returned, for such persons usually have some private grievance or grudge.

You are to keep secret all proceedings had before you. The counsel of the Government, of your fellow members and your own, you shall not disclose to anyone, not even to your wives. You are not at

Exhibit No. 2—(Continued)

liberty ever to state that you have had under consideration a matter which did not result in an indictment. Great injustice and injury might be done to the good name and standing of a citizen if it were ever known that there had been under consideration and for your deliberation the question of his innocence or guilt of a public offense. You will allow no one to question you as to your action or as to the action of your associates on the Grand Jury, nor shall you consult any one about any matter being or about to be investigated by you or about the law in relation thereto. The law trusts your judgment, not that of some other person whom you might consult. You may have ever so much confidence in the ability of some attorney or other person, but you are not permitted, by law, to consult any person other than the prosecuting officer and the Judge of this Court, nor is any other person permitted to advise you.

For a Grand Juror, or any person appearing before a Grand Jury, to divulge, except in a court of law, anything which he had learnt by reason of being a Grand Juror, or witness, interpreter, or reporter, until after an indicted person has been taken into custody is a criminal offense. The Government confides in you information which must be kept secret until it becomes proper for the Government to disclose it.

An interpreter may be present at the examination of witnesses before the Grand Jury upon the request of the foreman. The Court, upon request of

Exhibit No. 2—(Continued)

the foreman, will assign an official reporter to attend and report testimony given by the witnesses before the Grand Jury, and the reporter shall furnish the prosecuting officer with the transcript of such testimony when so directed by the foreman. The interpreter and reporter must each be sworn to act faithfully and to keep secret all proceedings of the Grand Jury. The interpreter and reporter will be sworn by the Court. Except for the prosecuting officer, reporter and interpreter, and the witness under examination, no other person shall be permitted to be present during the session of the Grand Jury. Absolutely no person except Members of the Grand Jury shall be permitted to be present during the deliberations and expressions of opinion and voting of the Grand Jury.

No indictment shall be found, nor shall any presentment be made, except by the concurrence of at least twelve of your members. It requires twelve of your number to indict and as many more as may vote. But, if less than twelve vote for an indictment, it is not a "True Bill" or "Indictment."

It shall be the duty of the Foreman of the Grand Jury to keep a record of the number of the Grand Jury concurring in the finding of any indictment and to file such record with the Clerk of the Court at the time the indictment is returned. Such record shall not be made public except upon order of the Court.

An "Indictment," when found, shall be endorsed "A True Bill" and such endorsement shall be

Exhibit No. 2—(Continued)

signed by your foreman whether he concurs in the finding of the indictment or not. It shall also be endorsed by the prosecuting officer. Indictments and presentments, when found, shall with all convenient dispatch be presented by your foreman, in the presence of the other Grand Jurors, to the Court for further proceedings according to law.

In case an indictment be found against any person not in custody or under bond, the same shall not be open to inspection to any person other than the prosecuting officer and the Court until the person therein named as a defe*i*dant shall have been arrested.

Witnesses appearing before the Grand Jury may be sworn in open Court or by the Foreman of the Grand Jury, or, in his absence, by any member thereof. No member of the Grand Jury may be excused for the term except by the Court. Your Foreman, however, may excuse one or more of your members temporarily, provided that the number remaining at all times is sufficient to constitute a quorum of thirteen. If any Grand Juror is absent without excuse, or is delinquent in his duty, it will be the duty of the foreman, in the presence of other Grand Jurors, to present the matter to the Court.

After being duly called into session by the Court, you will convene and adjourn from time to time as the work coming before you may require. It will be the duty of the foreman to preside in all your proceedings and deliberations, to preserve order and decorum, and to arrange, systematize and expedite

Exhibit No. 2—(Continued)

the work of the Grand Jury. You are to appoint one of your number to legibly record and preserve the minutes of your proceedings. These minutes are to be kept in permanent form and to be delivered to the prosecuting officer when so directed by the Grand Jury.

If, in the course of your proceedings, any case or matter shall come before you in which any member of the Grand Jury shall be personally interested or involved, or otherwise disqualified, he shall not participate in the consideration of such case or matter but shall withdraw therefrom.

For your guidance and convenience a copy of the Oath which you have taken as Grand Jurors and the form of Oath to be administered to witnesses appearing before you will be given you by the Clerk of the Court.

So far as the Court is now aware, no matter will be presented to you requiring any other special directions other than those already given. Should any matter arise, the Court will then call you before it and give such directions as may be required. You are at liberty at any time to ask the advice of the Court upon any question of law relating to matters under investigation, but you will often find the advice of the prosecuting officer upon these matters sufficient to guide your action.

The Court Room is available for your use during your deliberations. Mr. E. Stanley Elmore is appointed Foreman of this Grand Jury. The Court has appointed Sergeant Edward Chang to attend you in

Exhibit No. 2—(Continued)

the capacity of Bailiff. You will now convene, select your Clerk from among your members and proceed at once to inquire into offenses cognizable by you now ready for your immediate investigation.

Dated at Wailuku, Maui, Territory of Hawaii, this 25th day of March, 1947.

[Seal of Court.]

/s/ CABLE A. WIRTZ,
Judge, Circuit Court,
Second Circuit, T. H.

I do hereby certify that the foregoing is a full, true and correct copy of the original, on file in the office of the Clerk of the Circuit Court, Second Circuit, Territory of Hawaii.

Dated, at Wailuku, Maui, T. H., Sept. 18th, A.D. 1947.

/s/ GEORGE G. KAPAHEE,
Assistant Clerk, Circuit Court, Second Circuit, Territory of Hawaii.

[Endorsed]: Filed Mar. 25, 1947.

/s/ LYONS K. NAONE, JR.,
Assistant Clerk, Second
Circuit Court.

SUMMARY OF QUESTIONNAIRE
CIRCUIT COURT, SECOND CIRCUIT,
TERRITORY OF HAWAII
Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al and DIEGO BARBOSA, et al.

PROSECUTION'S EXHIBIT C

Precinct	Qualified	Questionable	Exempted	Not Qualified	Out of Jurisdiction Moved	Temporary Out of Jurisdiction Army	Questionnaire Deceased	Questionnaire Not Received	Total
1st	93	88	60	0	48	9	2	20	320
2nd	32	22	33	0	3	0	0	6	96
10th	38	41	33	13	14	1	1	10	151
17th	30	21	7	27	11	6	1	11	114
18th	50	79	52	78	10	9	0	14	292
19th	57	57	30	49	8	3	1	13	218
20th	2	13	2	20	1	0	0	3	41
21st	5	10	10	28	2	0	1	3	59
22nd	1	2	2	3	0	0	0	0	8
23rd	15	20	21	51	7	0	3	22	139
24th	0	5	1	10	0	0	1	1	18
25th	1	2	1	8	0	0	0	12	24
26th	7	15	4	16	3	1	0	3	49
28th	9	10	7	4	1	1	0	15	47
29th	2	3	9	0	0	0	0	2	16
30th	9	16	24	39	5	0	0	11	104
31st	56	39	31	49	11	1	2	17	206
32nd	8	19	22	40	7	1	0	16	113
33rd	29	12	1	9	3	3	0	3	60
	444	474	350	444	134	35	12	182	2,075

Filed Sept. 18, 1947 at 11:25 A.M.
/s/ D. W. TALLANT,
Deputy Clerk of Said Court.

EXHIBIT No. 2 (Continued)

CIRCUIT COURT, SECOND CIRCUIT

Territory of Hawaii

Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al & DIEGO BARBOSA, et al.

PROSECUTION'S EXHIBIT A

LIST OF REGISTERED VOTERS FOR THE GENERAL ELECTION NOVEMBER 7TH, 1944, THIRD REPRESENTATIVE DISTRICT BY NATIONALITIES

Male Precincts.	American	Chinese	English	Filipino	Hawaiian	Part-Hawaiian	Japanese	Korean	Porto Rican	Portuguese	All Others	Totals
1st. Lanai City	14	18	0	15	37	27	202	6	4	11	8	342
2nd. Honolua	3	2	0	1	21	10	45	0	0	4	3	89
3rd. Mala - Lahaina	12	4	2	6	45	21	243	0	4	33	8	378
4th. Kam III - Lahaina	24	9	2	1	43	7	137	0	0	21	10	254
5th. Olowalu	1	0	0	0	8	0	4	0	0	1	0	14
6th. Terr. Bldg. Grounds, Wailuku	25	6	2	0	46	27	95	0	3	40	14	258
7th. Wailuku Intermediate	41	41	5	1	29	36	120	0	0	66	28	367

8th.	Piihana-Wailuku	4	16	0	1	51	32	157	1	15	63	8	348
9th.	Papohaku - Wailuku	3	6	0	2	37	19	86	0	5	36	6	200
10th.	Waihee	1	3	0	0	54	16	39	0	3	22	1	139
11th.	Kahakuloa	0	0	0	0	10	1	0	0	0	0	0	11
12th.	Kahului	25	12	1	0	42	22	170	0	0	32	11	315
13th.	Puunene	35	5	1	9	23	19	296	1	14	137	21	561
14th.	Spreckelsville	17	0	3	1	5	5	118	0	4	46	8	207
15th.	Lower Paia	19	13	0	3	20	10	94	2	7	73	4	245
16th.	Upper Paia	29	6	3	5	30	11	185	1	21	135	27	453
17th.	Keahua	4	0	0	0	6	2	94	1	1	35	4	147
18th.	Makawao	19	9	0	0	28	14	77	0	15	119	10	291
19th.	Haiku	8	10	0	4	23	18	69	0	1	39	6	178
20th.	Huelo	1	0	0	1	22	5	3	0	1	5	1	39
21st.	Keanae	2	2	0	1	36	6	1	0	0	2	0	50
22nd.	Nahiku	0	0	0	0	4	1	0	0	0	4	0	9
23rd.	Hana	6	6	0	2	66	10	39	0	1	14	3	147
24th.	Kipahulu	0	2	0	0	14	2	0	0	0	0	0	18
25th	Kaupo	0	2	0	0	16	0	1	0	0	1	1	21
26th.	Honuaula	3	0	0	0	22	5	18	0	0	1	0	49
27th.	Keokea	14	35	0	3	35	17	96	0	2	53	12	267
28th.	Kihei	1	2	0	8	17	5	11	0	0	5	1	42
29th.	Halawa	0	0	0	0	12	1	0	0	0	0	0	13
30th.	Pukoo	10	2	0	1	56	18	6	0	0	2	1	96
31st.	Kaunakakai	12	10	0	3	56	29	70	1	0	8	6	195
32nd.	Hoolehua	7	6	0	0	82	8	4	0	0	2	1	110
33rd.	Maunaloa	3	4	0	2	3	3	21	0	0	3	2	41
34th.	Kalaupapa	11	5	1	1	78	17	19	0	0	16	2	150
	Totals	354	236	20	63	1077	424	2520	13	101	1029	207	6044

Filed Sept. 18, 1947 at 10:45 A.M.

/s/ D. W. TALLANT,

Deputy Clerk of Said Court.

EXHIBIT No. 2 (Continued)

EXHIBIT No. 2 (Continued)

CIRCUIT COURT, SECOND CIRCUIT

Territory of Hawaii

Criminal Nos. 2412 and 2413

TERRITORY OF HAWAII

vs.

ABRAHAM MAKEKAU, et al and DIEGO BARBOSA, et al

PROSECUTION'S EXHIBIT B

LIST OF VOTES CAST FOR THE GENERAL ELECTION, NOVEMBER 7TH, 1944, THIRD REPRESENTATIVE DISTRICT BY NATIONALITIES

Male Precincts.	American	Chinese	English	Filipino	Hawaiian	Part-Hawaiian	Japanese	Korean	Porto Rican	Portuguese	All Others	Totals
1st. Lanai City	10	14	0	12	31	21	174	3	3	8	7	283
2nd. Honolua	3	1	0	1	20	8	42	0	0	2	3	80
3rd. Mala - Lahaina	11	3	2	6	40	20	219	0	4	25	7	337
4th. Kam III - Lahaina	18	7	1	1	43	6	122	0	0	19	6	223
5th. Olowalu	1	0	0	0	7	0	4	0	0	1	0	13
6th. Terr. Bldg. Grounds, Wailuku	20	3	2	0	42	22	82	0	3	36	12	222
7th. Wailuku Intermediate	35	40	5	1	28	32	105	0	0	60	22	328

8th.	Piihana-Wailuku	3	15	0	1	44	27	133	0	10	58	7	298
9th.	Papohaku - Wailuku	3	5	0	1	33	14	75	0	4	33	5	173
10th.	Waihee	1	3	0	0	52	15	36	0	3	19	1	130
11th.	Kahakuloa	0	0	0	0	10	1	0	0	0	0	0	11
12th.	Kahului	22	10	0	0	41	19	157	0	0	28	10	287
13th.	Puunene	32	5	1	8	23	18	267	1	12	132	20	519
14th.	Spreckelsville	17	0	3	1	4	5	102	0	4	44	5	185
15th.	Lower Paia	17	11	0	2	17	9	81	2	7	71	4	221
16th.	Upper Paia	26	6	2	5	28	10	159	1	17	127	24	405
17th.	Keahua	2	0	0	0	6	2	76	1	1	33	4	125
18th.	Makawao	18	8	0	0	27	14	66	0	15	104	9	261
19th.	Haiku	7	8	0	2	19	13	55	0	1	37	6	148
20th.	Huelo	1	0	0	1	18	4	2	0	1	5	1	33
21st.	Keanae	1	1	0	1	35	6	1	0	0	2	0	47
22nd.	Nahiku	0	0	0	0	4	1	0	0	0	3	0	8
23rd.	Hana	5	4	0	2	63	0	33	0	1	12	3	123
24th.	Kipahulu	0	2	0	0	12	1	0	0	0	0	0	15
25th.	Kaupo	0	2	0	0	15	0	1	0	0	1	1	20
26th.	Honuaula	3	0	0	0	18	5	17	0	0	1	0	44
27th.	Keokea	10	30	0	2	24	16	81	0	1	48	10	222
28th.	Kihei	1	2	0	0	16	5	8	0	0	5	1	38
29th.	Halawa	0	0	0	0	11	1	0	0	0	0	0	12
30th.	Pukoo	7	1	0	1	46	14	5	0	0	2	1	77
31st.	Kaunakakai	11	10	0	2	46	26	56	1	0	6	5	163
32nd.	Hoolehua	7	3	0	0	70	7	3	0	0	2	1	93
33rd.	Maunaloa	3	3	0	2	3	2	18	0	0	2	2	35
34th.	Kalaupapa	10	5	0	0	63	12	15	0	0	16	2	123
	Totals	305	202	16	52	959	356	2195	9	87	942	179	5302

Filed Sept. 18, 1947 at 10:47 A.M.

/s/ D. W. TALLANT,
Deputy Clerk of Said Court.

EXHIBIT No. 2 (Continued)

[The following questionnaire form in use in the United States District Court is not a part of any exhibit; it is included by counsel in order to acquaint the Court of Appeals with the practice in the trial court.]

QUESTIONNAIRE

To Prospective Jurors

United States District Court
District of Hawaii

NOTE—Mail reply within 48 hours to Clerk, U. S. District Court, P.O. Box 3193, Honolulu, T. H.

1. Full name .....
2. Address, Residence ..... Phone No.....
Business ..... Phone No.....
3. Where born? ..... Date of birth.....
4. If naturalized, when and where?.....
5. How long in Territory?.....
6. Have you been indicted or convicted of any offense, if so, give details?.....
.....
7. Married or single?.....
8. Nationality of father?.....
of mother? .....
9. What experience have you had as a Juror? (Indicate whether Criminal or Civil cases).....
10. What is your present occupation and by whom employed? .....
.....

11. What has been your occupation during the past five years? .....

.....

.....

12. What schools have you attended?.....

13. What grade in school did you reach?.....

.....

14. Have you any defect of hearing, or sight, or other physical reason which would interfere with your serving as a juror, if so, what?.....

.....

15. Do you claim disqualification or exemption from jury service for any reason? (Give details)

.....

.....

Date:..... Signature.....

(See reverse side for qualifications and exemptions)

Qualifications, Exemptions

Sec. 9791 R.L.H. 1945.

Qualified when. A person is qualified to act as a juror or grand juror:

1. If he is a male citizen of the United States, and of the Territory, of the age of twenty-one (21) years or over, and possesses the qualifications for registration as a voter, and is a resident of the circuit from which he is selected; and

2. If he is in possession of his natural faculties and not decrepit; and

3. If he is intelligent, and of good character; and

4. If he can understandingly speak, read and write the English language; and

5. If he is selected, summoned, returned and sworn without reference to race, or place of nativity.

Sec. 9792 R.L.H. 1945.

Disqualified when. A person is not competent to act as a juror who does not possess the qualifications prescribed by the preceding section, or who has been convicted of any felony or of a misdemeanor involving moral turpitude.

Sec. 9793 R.L.H. 1945.

Exempt when. A person is exempt from liability to act as a juror if he is:

1. Over sixty years of age;

2. An attorney at law;

3. A salaried officer or employee of the United States, Territory, city and county or county;

4. A minister of the gospel, or a priest of any denomination, following his profession;

5. A teacher in a university, college, academy, school, or other place or institution of learning;

6. A practicing physician, surgeon or dentist;

7. An officer, keeper or attendant of an almshouse, hospital or asylum.

8. A person employed on board of a vessel navigating the waters of or between the islands of the Territory, or on board of a vessel engaged in

the coasting trade, or plying between any port of the United States and a port in a foreign country.

9. A member of the militia when on active service, or an active member of a fire department of a village, town, city or other place in the Territory.

(Note: Under Section 3712, a person is not disqualified but may claim exemption.)

Filed Dec. 17th, 1946, at 11:00 o'clock a.m.

/s/ JOHN V. COCKETT,
Clerk, Second Circuit Court.

Miss Lewis: Now, the Court had some interest in the early stages of the proceedings—I have had time to get the material together and I wonder if it wouldn't be appropriate if we gave it an exhibit number. I have a biography of William Little Lee, who wrote that penal code. [6]

Judge Biggs: Yes, I would like to receive that. Any objection?

Mrs. Bouslog: No objection.

Judge Biggs: That will be marked and given a Defendants' number.

Miss Lewis: That was prepared by the Public Archives here. I have three copies.

Judge Biggs: Very well.

Miss Lewis: I also feel that it would be helpful to the Court, although the Court can take judicial notice of it. I have a photostat here of the Hawaiian Commission message, transmitting the proposed Hawaiian Organic Act. This is not the complete message. It is a large volume. But it includes all the parts relating to the report of the

judiciary, and it also includes the table of the penal laws that were transmitted with that message and the conspiracy and riot act as transmitted with that message.

Judge Biggs: I think we should receive it and let it be marked as a Defendants' exhibit.

Miss Lewis: And I also have for the Court's convenience a photostat of the parts of the House of Representatives report No. 305, 56th Congress, 1st session, which related to a report of the judiciary.

Judge Biggs: I think that should be received also. Let it be marked. [7]

The Clerk: "P," "Q" and "R."

(The documents referred to were received in evidence as "Defendants' Exhibits P, Q and R.")

DEFENDANTS' EXHIBIT P

William Little Lee

First Chief Justice of the Hawaiian Supreme Court

(All documents and publications quoted are on file in the Public Archives at Honolulu.)

William Little Lee was born at Sandy Hill, Washington County, New York, on February 25, 1821. He was the son of Stephen and Mary (Little) Lee. At the early age of thirteen he entered Norwich University in Vermont, where he remained two years, at the end of which time he left that institution and worked as a surveyor for the State of New York. Lee rose rapidly in this profession and at

the coasting trade, or plying between any port of the United States and a port in a foreign country.

9. A member of the militia when on active service, or an active member of a fire department of a village, town, city or other place in the Territory.

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the end of three years left the post of Resident Engineer to return to Norwich University, from which he graduated at the age of twenty, taking first honors.

On leaving the University Lee received the appointment of Superintendent of the Military Academy at Portsmouth, Virginia, in which position he remained one year. Having by this time decided upon adopting the law as his permanent profession, he entered Harvard Law School, where he completed his course of study under such well known jurists as Judge Story and Professor Greenleaf. After a serious illness, Lee commenced the practice of law in Troy, New York, in 1844.[1] Here he remained only a short time before the recurrence of pulmonary symptoms warned him to seek a milder climate. At that time public attention was turned towards the opportunities offered by the new Territory of Oregon. William Lee, together with Charles R. Bishop and other young men, embarked on the brig Henry[2], bound for the Columbia River by way of Hawaiian Islands. After a stormy voyage of 231 days from Newportbury, the Henry reached Honolulu on October 12, 1846. It was found that repairs to the brig would take several months to complete so the Oregon bound passengers became interested in the opportunities offered in Hawaii.

The government was in need of law advisers—the

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[1]Historical File, 1845, May 16. Certificate to practice Law in New York Supreme Court.

Attorney General, John Ricord—highly recommended William Lee. Under the Act to organize the Executive Department[3] provision was made for the temporary appointment, by the Governor of Oahu, of one or more judges to sit at Honolulu and have original jurisdiction, for Oahu only, in cases involving over one hundred dollars in value, and general appellate jurisdiction for the whole kingdom. Lorrin Andrews was appointed first of these judges, legal assistance was urgently needed, and the King [Kamehameha III], impressed with Lee's abilities, pursuaded him to abandon the Oregon project and remain in Honolulu. Lee was commissioned as judge, colleague of Judge Andrews, on December 1, 1846, at a salary of $2500. a year.[4] On the same day a letter or denization was issued him by the King in Council, conferring upon him all the rights, and privileges of an Hawaiian subject, without requiring him to surrender his American citizenship.[5] The Hawaiian Reports begin with the decisions of Judge Lee in January 1847.

August 18, 1847, the King and Privy Council appointed Lee to the Board of Commissioners to quiet Land Titles to succeed William Richards.[6]

On August 26, 1847, the King received a Testi-

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[3]Laws of Kamehameha III, II, 3.

[4]Privy Council Records, vol. 2, p. 91, 1846, Dec. 2.

[5]Foreign Office & Executive, 1846, Dec. 1. Original Letters Patent of Denization.

[6]Foreign Office & Executive, 1847, Aug. 18, original appointment.

monial signed by lawyers of Troy, New York, elaborating on Lee's character and abilities.[7] A copy of this interesting document is attached.

The Act to Organize the Judiciary was approved September 7, 1847. Above district courts, having jurisdiction in minor cases only, were four circuit courts, taking the place of the governors' courts, and above these was established a Superior Court of Law and Equity, consisting of a Chief Justice and two Justices, all elected by the Representatives and holding office during good behavior. This had appellate jurisdiction in all cases and original jurisdiction in the more important cases. The Justices also went on circuit, sitting with the circuit judges.

September 27, 1847, the House of Representatives adopted a Joint Resolution requesting William L. Lee to go through the laws and make certain changes so as to make them clear.[8] On September 29, 1847, the same House adopted the Resolution appointing William L. Lee, Chief Justice, and John Ii and Lorrin Andrews, Superior Judges.[9]

Prior to this appointment Lee had been commissioned as an Honorary Member of His Majesty's Privy Council of State.[10]

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[7]Historical File, 1847, Aug. 26.

[8]Journal, House of Representatives, 1847, Sept. 27, p. 15.

[9]Ibid, Sept. 29, p. 16.

[10]Foreign Office & Executive, 1847, Sept. 10, original.

Judge Lee's work as a member and president of the Commission to quiet Land Titles has been too often recounted and is too lengthy to include in this biographical sketch. He twice submitted his resignation to the Privy Council, but both times was asked to withdraw it.

On March 11, 1849, William Lee was married to Miss Catherine E. Newton, of Albany, New York, on board of the American ship Leland, in Honolulu Harbor.[11] They had been friends long before Lee came to Hawaii.

On the 21 of June, 1850, the House of Nobles and Representatives passed the Penal Code, as presented by Lee, May 20, 1859. In his report prefacing the Penal Code, Lee states:

. . . I am greatly indebted to the labors of the commissioners appointed to prepared a penal code for Massachusetts, as given in their report, and also to those of Mr. Livingston in the penal code of Louisiana. From both of these able works I have borrowed largely . . . I have in the main, adopted the principles of the English common law, as the foundation of a code best adapted to the present and approaching wants and condition of the nation. . . .''[12]

In 1851 Lee sat in the House of Representatives and was elected Speaker of that body, April 30, 1851, to serve for that year's session. At this session a resolution was passed by both houses appoint-

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[11]Polynesian, 1849, March 17.

[12]Penal Code, 1850, report as preface.

ing a commission to revise the constitution of the kingdom.[13] The King, the Nobles and Representatives were each to appoint one member. The Nobles appointed John Ii, the House appointed William Lee, and the King's appointee was Dr. G. P. Judd, Minister of Finance.

The constitution, drafted by them was adopted by the legislature on June 14, 1852. At the head of the judicial system stood the Supreme Court, consisting of a Chief Justice, who was also Chancellor, and two associate Justices, all appointed by the King and Council and holding office during good behavior.[14] Lee is understood to have had the principal part in the preparation of this instrument, and was no doubt the actual draftsman. All the Justices of the Superior Court of Law and Equity were appointed to the Supreme Court, Lee becoming Chief Justice and Chancellor, holding these positions until his death. Lee's resignation, offered in 1854, on account of ill health, was refused. His physical breakdown dated from the small pox epidemic of 1853, when he worked to exhaustion caring for the sick.

On March 12, 1855, Lee was appointed as His Majesty's Envoy Extraordinary and Minister Plenipotentiary to the courts of Washington, London, Paris and St. Petersburg, in which capacity he negotiated the first reciprocity Treaty[15] which, how-

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[13]Session Laws. 1851, p. 103.

[14]Constitution, 1852.

[15]Privy Council Records, vol. 9, p. 101, 1855, March 12.

ever, failed of ratification in the United States Senate. The Polynesian, 1855, September 8, gives an account of Lee's presentation to the President of the United States. The Foreign Office and Executive files, 1855, contain the official correspondence relative to Lee's mission.

On his return to Hawaii, Lee's health failed rapidly and, on May 28, 1857, William Little Lee, Chief Justice of Hawaii, passed away at his home in Honolulu.

Besides his official activities, William Lee was a founder and for many years president of the Royal Hawaiian Agricultural Society; was active in the establishment of the Honolulu Sailors' Home; at different times he was president of the Oahu Temperance Society and of the Hawaiian Bible Society, and a trustee of the Punahou Schools.

The Polynesian, May 30, 1857, gives a long account of the life and funeral of William L. Lee; the June 18, 1857 issue published the tributes paid him by the Supreme Court; and again on July 18, 1857, the Resolution drawn up by the Bar of Hawaii.

The original license issued to William L. Lee to practice law in the Supreme Court of New York State is in the Public Archives.[16]

The information on William Little Lee has been compiled from official and private records, and pub-

[16]Historical File, 1845, May 16.

lications on file in the Public Archives, at Honolulu, Territory of Hawaii.

/s/ MAUDE JONES,
Archivist, Board of Commissioners of Public Archives.

Honolulu, April 30, 1948.

To All whom it may concern:

The undersigned cheerfully represent, that they have been for many years well acquainted with William L. Lee, Esquire, formerly a resident of the village of Sandy Hill, County of Washington & State of New York. In our opinion no young man could have better facilities for the acquisition of the best education, than he had—and that he improved those facilities none need doubt, as his aim seems ever to have been, to acquire those—excellencies of character which dignify & adorn the most elevated position in society—His unwearied industry as a student of the Law—prompted by a constant desire to become a master of this—his favorite science, was noticed by all who knew him——

Having finished his Law Studies at the celebrated Law School at Cambridge, under Chief Justice Story—he was admitted to the Bar of the Supreme Court of this State & soon after opened an office in the city of Troy where he practiced the Law until his departure for Oregon.

His prospects of future eminence & prosperity here, (at the time he left for Oregon city) were such as would have satisfied most young men. For

unyielding integrity, energy of character, untireing industry, & propriety of deportment in every respect in the various relations he sustained—business & social,—whether as the Lawyer, the student, or the private citizen,—few young men, if any, of our acquaintance, stood higher. He was emphatically one of the worthiest young men at the Bar, and an ornament to society.

Therefore it is with pleasure we avail ourselves of this privilege of certifying as to the character of Counsellor Lee & of recommending him to the favorable consideration of all whom fortune or business may bring to his acquaintance as one in every particular worthy of esteem & confidence; & as having the esquisite qualifications to discharge, with honor to himself & satisfaction to all concerned, the duties of any office of government to which, he may be appointed, & above all, as one of the "noblest works of God, an honest man."

Dated Sandy Hill May A.D. 1847.

/s/ N. B. MILLIMAN,
/s/ CHARLES HUGHES,
/s/ I. McCAN,
/s/ HENRY B. NORTHUP,
/s/ LYMAN H. NORTHUP,
/s/ A. DALLAS WAIT,
/s/ HENRY C. MARTINDALE,
/s/ LUTHER WAIT,
Counsellors at Law, &c,
/s/ JOHN T. LAMPORTL,
/s/ E. PEARSON,
/s/ GEO. C. WAITE,
/s/ C. D. SHELDON,
Counsellor at Law. Troy,
N. York,
/s/ H. EVERTS,
Assist Alderman NY
Ward of City of Troy
N.Y. & Counsellor at
Law.

Having been for sometime, & until his departure from the United States, associated in business in the practice of Law with Col Lee it affords me unfeigned pleasure to be able to add to the above, my own testimony to his Excellence as an Associate, a Citizen, a Jurist & a Man.——

/s/ J. E. CHURCH,
late Church & Lee.

Counsellors at Law.

N York Sup Court 9½ River St. Troy N.Y. Aug. 26th 1847.

Public Archives Foreign Office & Executive File, August 26, 1847.

Admitted.

DEFENDANTS' EXHIBIT Q

Senate

55th Congress, 3d Session. Document No. 16.

Hawaiian Commission

MESSAGE

From the

President of the United States

Transmitting

The Report of the Hawaiian Commission, Appointed in Pursuance of the "Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States," Approved July 7, 1898; Together with a Copy of the Civil and Penal Laws of Hawaii.

December 6, 1898.—Read, referred to the Committee on Foreign Relations, and ordered to be printed.

Washington:

Government Printing Office,

1898.

To the Congress of the United States:

I transmit herewith, for the information of the

Exhibit Q—(Continued)

Congress, the report of the Hawaiian Commission, appointed in pursuance of the "Joint resolution to provide for annexing the Hawaiian Islands to the United States," approved July 7, 1898; together with a copy of the civil and penal laws of Hawaii.

WILLIAM McKINLEY.

Executive Mansion,
December 6, 1898.

United States Senate,
Washington, D. C., December 2, 1898.

To the President:

I have the honor to inclose herewith, for transmission to the Congress of the United States, the official report of the Hawaiian Commission, appointed in pursuance of the joint resolution of Congress approved July 7, 1898, being public resolution No. 51 of the Fifty-fifth Congress, together with an appendix containing copies of certain bills the passage of which is respectfully recommended, and a copy of the civil and penal laws of Hawaii, as modified in conformity with the recommendations of the commission, and reports from various executive officers of the Hawaiian Government and of committees appointed by the commission.

Respectfully submitted,
S. M. CULLOM,
Chairman.

III

Preface

The first written laws of Hawaii were published

Exhibit Q—(Continued)

in 1823, and the first compilation was published in 1842 in a small volume now known as the "Blue Book." This was followed by the Session Laws of 1843, and by the comprehensive acts to organize the Government, enacted in 1845-1847 and published together. A penal code was enacted 1850. Session Laws were then published yearly until 1859, when the laws, not already embodied in the Penal Code were codified into a "Civil Code," divided into chapters with sections numbered consecutively through the volume. This code was enacted by the legislature.

Following this were the Session Laws, passed every even year from 1860 to 1882, inclusive. In 1869 a new "Penal Code" was published, comprising the portions of the Penal Code of 1850 still in force and the penal statutes enacted subsequently. This code was enacted by the legislature. In 1884 the "Compiled Laws" were published. This comprised the portions of the Civil Code of 1859 still in force and the statutes enacted subsequently and not already included in the Penal Code of 1869. The original numbering of the Civil Code was retained and new matter was placed either near similar subjects or at the end of the volume.

After this the following laws were passed: Session Laws of 1884, 1886, 1887, 1888, 1890, 1892; Acts of the Provisional Government (1893), Constitution and Laws of the Republic (1894-1895), Session Laws of 1895-1896. In 1897 all the laws were compiled by Sidney M. Ballou and published

Exhibit Q—(Continued)

by authority in two volumes known as the "Civil Laws" and the "Penal Laws."

The compiled laws of 1884 were taken as the basis of the civil laws, but the parts were rearranged and the sections renumbered, and all laws of a penal nature were transferred to the "penal laws." The basis of the penal laws was the Penal Code of 1869, the chapters of which, so far as still in force, were retained with this original numbering, and new matter was added as new chapters. In this compilation many changes were made in pursuance of general statutes or the provisions of the constitution of the Republic, e. g., the substitution of "Republic" for "Kingdom," "President" for "King," etc. Notes were added at the end of each chapter, with references to the original statutes and to decisions of the supreme court. Following this compilation were the session laws of 1898.

The present volume comprises the Civil Laws and the Penal Laws compiled and published in 1897 and the Session Laws of 1898, modified in conformity with the recommendations of the commission of five members appointed by the President of the United States to recommend legislation concerning the Hawaiian Islands, under the provisions of the joint resolution of Congress approved July 7, 1898. The original numbering of chapters and sections has been retained. The numbers of those chapters and sections the text of which is omitted are inclosed in brackets. These include the chapters and sections which the commission recommended to

Exhibit Q—(Continued)

be repealed; also those of a temporary nature and no longer in force, and those, especially in the Session Laws of 1898, which were merely amendatory of previous laws, and which have been inserted in place of the laws to which they were amendatory. Many changes have been made in the text, in pursuance of the general recommendations of the commission, e. g., "Republic" has been changed to "Territory" or "Government," "president" to "governor," "minister of finance" to "treasurer," "minister of the interior" to "superintendent of public works," or otherwise, as the case might be, etc. The notes also have been changed to conform to changes in the text. Errors, so far as discovered, in the compilation of 1897 have been corrected. Enacting and approval clauses have been omitted.

The following abbreviations are used:

C.C., for civil code of 1859.
S.L., for session laws.
C.L., for compiled laws of 1884.
P.C., for penal code of 1869.
P.G., for acts of the provisional government, 1893.
L.R., for laws of the Republic.
P.L., for penal laws, 1897.

Chapter 28

CONSPIRACY

§ 229. A conspiracy is a malicious or fraudulent combination or mutual undertaking or concerting together of two or more to commit any offense or instigate anyone thereto, or charge anyone there-

Exhibit Q—(Continued)

with; or to do what plainly and directly tends to excite or occasion offense, or what is obviously and directly wrongfully injurious to another:

For instance——

A confederacy to commit murder, robbery, theft, burglary, or any other offense provided for in the criminal code; to prevent, obstruct, defeat, or pervert the course of justice by suborning a witness, tampering with jurors, or the like offenses;

To groundlessly accuse anyone of, and cause him to be prosecuted for, an offense;

To charge anyone with an offense, with the intent and for the purpose of extorting money from him;

To falsely charge one with being the father of an illegitimate child;

To cheat another by means of false tokens and pretenses;

To manufacture a spurious article for the purpose of defrauding whomsoever the same can be sold to;

To destroy a will and thereby prejudice the devisees;

To prevent another, by indirect and sinister means, from exercising his trade, and to impoverish him;

To establish, manage, or conduct a trust or monopoly in the purchase or sale of any commodity.

§ 230. Any person knowingly acceding to and joining in a conspiracy after the same is formed is a party thereto, no less than the one who originally takes part in forming the same.

Exhibit Q—(Continued)

§ 231. It is not requisite that the act agreed upon should be done or attempted in pursuance of the conspiracy; the conspiracy itself constitutes the offense.

§ 232. The act of each party to a conspiracy, in pursuance thereof, is the act of all.

§ 233. Husband and wife can not by themselves, without others, be guilty of a conspiracy, and the acts or confessions of either are not evidence against the other in a prosecution for conspiracy.

§ 234. Conspirators may be tried jointly or severally. But to prevent oppression by joining parties, and thus depriving some of the testimony of others, it is provided that in the trial of anyone for a conspiracy another charged as a coconspirator may be a witness, and in such case the two may be separately tried, though joined in the indictment.

§ 235. Where one is convicted of any offense, he is not liable thereafter to be tried for or convicted of a conspiracy to commit the same; and if a conspiracy to commit an offense and the commission of the same be charged in the same indictment, the defendant is liable to be sentenced for one only.

§ 236. On a prosecution for conspiracy, if the jury find, or the magistrate having jurisdiction of the fact consider, the offense to be trivial, the defendant shall be discharged, with or without costs, in the discretion of the court.

§ 237. Conspiracy to commit, or to instigate to the commission of, a felony; or to charge anyone with felony; or to prevent, obstruct, defeat, or pervert the course of justice; or to forge, or counter-

Exhibit Q—(Continued)

feit, or cheat, to an amount exceeding one hundred dollars, is in the first degree, and shall be punished by imprisonment at hard labor not more than ten years, on by fine not exceeding one thousand dollars, in the discretion of the court.

§ 238. A conspiracy to establish, create, manage, or conduct a trust or monopoly in the purchase or sale of any commodity is in the second degree, and shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding ten thousand dollars, in the discretion of the court.

§ 239. Conspiracy not appearing to be in the first and second degrees is in the third degree, and shall be punished by imprisonment at hard labor not exceeding one year and by fine not exceeding four hundred dollars, in the discretion of the court.

Note To Chapter 28

§ 299 is P. C., ch. 28, § 1, amended S. L. 1892, ch. 102. §§ 230-237 are P. C., ch. 28, §§ 2-9. §§ 238-239 are S. L. 1892, ch. 102.

Cases in Hawaiian Reports: Rex. v. Anderson and Russell, 1 Haw., 41; King v. Thornton, 4 Haw., 45; Rex v. Ho Fon, 7 Haw., 758; R. v. Marks, 1 Haw., 81; R. v. Macfarlane, 7 Haw., 352; R. v. Walker, 9 Haw., 171.

Chapter 38

Riots and Unlawful Assemblies

§ 373. Where three or more persons are, of their own authority, assembled together with disturbance, tumult and violence, and striking terror or tending

Exhibit Q—(Continued)

to strike terror into others, such meeting is an unlawful assembly, within the meaning of the provisions of this chapter.

§ 374. A riot is where three or more being in lawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others.

§ 375. Menacing language, or gestures, or show of weapons, or other signs or demonstrations tending to excite terror in others, are sufficient violence to characterize an unlawful assembly or riot.

§ 376. Concurrence in an intent of tumult and violence, and in any violent tumultuous act, tending to strike terror into others, is a sufficient joining in intent to constitute a riot, though the parties concerned did not previously concur in intending the act. For example, where persons present at a public performance concur in the intent to disturb the same by tumult and violence, tending to strike terror; or concur in one or more acts of tumult or violence tending to strike terror, done by any of the assembly.

§ 377. It is not requisite in order to constitute an unlawful assembly or riot that persons should have come together with a common or unlawful intent, or in any unlawful manner; or that the object of the meeting, or the act done or intended, should of itself be unlawful. The tumult and violence tending to excite terror, characterize the offense, though the persons may have assembled in a lawful manner, and though the object of the meet-

Exhibit Q—(Continued)

ing, if legally pursued, or the act done or intended, if performed in a proper manner, would be lawful.

§ 378. Persons present at a riot or unlawful assembly, and promoting the same, or aiding, abetting, encouraging or countenancing the parties concerned therein by words, signs, acts, or otherwise, are themselves parties thereto and principals therein.

§ 379. In case of an unlawful assembly being by proclamation or otherwise ordered to disperse by any one having legal authority to disperse the same, any one voluntarily remaining in the assembly after notice of such order, except for keeping the peace, is thereby a party concerned in such unlawful assembly.

§ 380. Every person present in an unlawful assembly is presumed to have notice of an order given by lawful authority in lawful manner for the same to disperse.

§ 381. Whoever is guilty of a riot or unlawful assembly, having for its object the destruction or injury of any house, building, bridge, wharf, or other erection or structure; or the destruction or injury of any ship or vessel, or the furniture, apparel, or cargo thereof, shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding five hundred dollars, and shall also be answerable to any person injured to the full amount of his damage.

§ 382. Whoever is guilty of being a party concerned in a riot or unlawful assembly endangering

Exhibit Q—(Continued)

the life, limb, health, or liberty of any person, or in any other riot or unlawful assembly not of the description designated in the above section, shall be punished by imprisonment at hard labor not more than five years or by fine not exceeding one thousand dollars.

§383. In case of any riot or unlawful assembly in any town, village, or district, it shall be the duty of every district magistrate there resident, and also of the chief sheriff, sheriff of the island, and his deputies, and of the prefect of police for said town, village, or district, to go among the persons so assembled, or as near to them as may be with safety, and in the name of the government to command all the persons so assembled immediately and peaceably to disperse; and if the persons shall not thereupon so disperse, it shall be the duty of each of said officers to command the assistance of all persons present in seizing, arresting, and securing in custody the persons so unlawfully assembled, so that they may be proceeded with for their offense according to law.

§ 384. If any persons riotously or unlawfully assembled, who have been commanded to disperse by the chief sheriff, sheriff, deputy sheriff, prefect of police, or district magistrate, shall refuse or neglect to disperse without unnecessary delay, any two of such officers may require the aid of a sufficient number of persons in arms, or otherwise, as may be necessary, and shall proceed in such manner, as in their judgment shall be expedient, forth-

Exhibit Q—(Continued)

with to disperse and suppress such unlawful, riotous, or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

§ 385. Whenever an armed force shall be called out for the purpose of suppressing any tumult or riot, or unlawful assembly, or to disperse any body of riotous men, such armed force shall obey such orders for suppressing the riot or tumult, or for dispersing and arresting the persons who are committing any of the said offenses, as they may receive from the chief sheriff, sheriff of the island, or prefect of police, and also such further orders as they may receive after they shall arrive at the place of such unlawful, riotous, or tumultuous assembly, as may be given by any two of the magistrates or officers mentioned in the preceding section.

§ 386. If by reason of the efforts made by any two or more of said magistrates or officers, or by their direction, to disperse such unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or any other person then present, as spectators or otherwise, shall be killed or wounded, the said magistrates and officers and all persons acting by their order or under their direction shall be held guiltless and justified by law, and if any of said magistrates or officers, or any person acting under their authority or by their direction shall be killed or wounded, all the persons so at the time unlawfully, riotously, or tumultu-

ously assembled, and all other persons who, when commanded or required, shall have refused to aid and assist the said magistrate or officers, shall be held answerable therefor.

Note to Chapter 38. §§ 373-386 are P. C. ch. 38, unaltered.

Admitted.

DEFENDANT'S EXHIBIT R

House of Representatives

56th Congress—1st Session—Report No. 305

Government for the Territory of Hawaii

February 12, 1900—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Knox, from the Committee on Territories, submitted the following Report

(To accompany H. R. 2972)

The Committee on the Territories, to whom was referred the bill (H. R. 2972) to provide a government for the Territory of Hawaii, report the bill with sundry amendments (those parts added by the committee being printed in italics and those stricken out indicated by lines drawn through the type) and, as amended, recommend that the bill pass, and with this recommendation submit the following report:

The Judiciary of the Territory of Hawaii and of the New Territory After Its Organization

The following report of the Hawaiian Commis-

sioners, signed by the Hon. John T. Morgan and W. F. Frear, one of the justices of the supreme court of Hawaii, is submitted as being a full and comprehensive statement, and applicable at the present time to the jurisprudence of the Hawaiian Islands:

Report of the Committee on Judiciary

Hawaii having been hitherto a single independent State, its courts have exercised much of the jurisdiction exercised by both the Federal and State courts in this country. In this respect the Hawaiian courts have resembled somewhat the courts of the Territories of the United States, which, as a rule, have had much Federal jurisdiction, as well as jurisdiction of cases arising under the Territorial laws. It seems very desirable in the case of Hawaii to separate these jurisdictions, leaving all cases arising under the laws of the Territory to the Territorial courts and transferring all jurisdiction of a Federal nature to a district court of the United States to be established for the Territory of Hawaii. This district court should have also the jurisdiction of a circuit court of the United States.

There are many reasons which make this separation of jurisdictions desirable. The foreign shipping already calling at the ports of Hawaii, as well as the shipping from the United States, is very extensive and is rapidly increasing. With the natural growth of commerce on the Pacific, and especially in view of the change in the ownership of the Philippines, the near completion of the

Siberian Railway, and the projected Nicaraguan Canal, the shipping that will call at the Hawaiian Islands will undoubtedly increase more rapidly in the future than it has increased in the past. This will give rise to many important admiralty cases in Hawaii, some of which may become matters of international interest.

It is obviously very desirable that jurisdiction over such cases should be exercised by Federal judges. Again, in the event of war, Hawaii may become a center for the trial of prize cases, of which the Federal courts should have exclusive jurisdiction. By making the relations between the Territorial courts of Hawaii and the Federal courts, as to appeals, removal of causes, etc., the same as the corresponding relations between the State and Federal courts, all cases of a local nature can be tried and determined finally in the islands, and thus the expense and delay of bringing such cases to the mainland, and possibly to Washington, a distance of 5,000 miles, will be avoided.

Very little change need be made in the organization of the territorial or local judiciary. The organization and procedure of the Hawaiian courts is already very similar to what is found in the United States. This has been the result of a growth of sixty years of constitutional government in Hawaii under American influences. The judiciary department, unlike the executive and legislative departments, has always been free from politics. The people of Hawaii have great confidence in their judiciary, and have always looked to it as the one

impregnable bulwark of their liberties. The last two sovereigns under the monarchy, who did so much to lower the standard of the executive and legislative departments, did not dare to encroach materially upon the judiciary department until the final attempt of the Queen, which resulted in the loss of her throne.

The people of Hawaii, of all classes, as shown by the memorials presented to the commission, desire the judiciary, as at present organized, to be retained with as little change as possible, with the exception that they generally deem it best that there should be a United States district court to take jurisdiction of Federal cases. The one change which it seems desirable to make in the local judiciary is the abolition of the racial and mixed juries. Hitherto, in criminal cases, foreigners have been tried by juries composed of foreigners, and Hawaiians by juries composed of Hawaiians, and civil cases, if between foreigners, have been tried by foreign juries; if between Hawaiians, by Hawaiian juries; if between foreigners and Hawaiians, by juries composed of an equal number of foreigners and Hawaiians.

It is now proposed to abolish these race and mixed juries and to require instead merely that juries shall be composed of citizens of the United States who understand the English language, without respect to color or blood. As the Hawaiians will become citizens of the United States and as most of them understand the English language, the greater portion of them will be competent to sit on

juries. The requirement that they shall understand the English language is designed not to exclude the Hawaiians, but to avoid the expense and delay that would result if all proceedings had to be gone through in both languages through an interpreter.

The Hawaiian judiciary may be briefly described as follows:

There are three sets of courts—a supreme court, superior courts of record, and local courts—corresponding to the three classes of courts usually found elsewhere. They are called the supreme court, the circuit courts (five in number), and the district courts (twenty-nine in number).

The district courts sit without a jury. They have jurisdiction in criminal cases, over misdemeanors, and in civil cases up to $300 except in cases of slander, libel, malicious prosecution, false imprisonment, seduction, breach of promise of marriage, and cases involving title to real estate. The civil jurisdiction is exclusive up to $50 and concurrent with that of the circuit courts from $50 to $300. A general appeal lies in all cases, civil and criminal, to the circuit court, or an appeal solely on points of law may be taken to either the circuit or the supreme court.

The circuit courts sit with a jury, unless jury is waived, for the trial of most original law cases not begun in the district courts and in cases appealed from the district courts. The circuit judges sit without a jury in equity, admiralty, probate, and bankruptcy cases. Part of this jurisdiction will now be turned over to the United States district judge.

There has as yet been no fusion of equity and law cases. Equity and law courts, as under the Federal system, are regarded as distinct, although presided over by the same judges. Exceptions lie from the circuit courts in law cases and general appeals in equity cases to the supreme court.

The supreme court consists of a chief justice and two associate justices. It hears appeals, exceptions, and writs of error from the circuit and district courts, and has original jurisdiction of contested-election cases, claims against the government, and the issuance of certain writs, such as habeas corpus, prohibition, mandamus, and certiorari. In case of the absence or disqualification of a justice, his place in any particular case may be filled by a circuit judge or member of the bar.

The chief justice and associate justices are appointed by the President (hereafter the governor), with the advice and consent of the Senate, and hold office, like the Federal judges, during good behavior. The circuit judges are appointed in the same way and hold office for six years. The district judges are appointed by the President, with the approval of the Cabinet (hereafter by the governor alone), and hold office for two years.

The chief justice and associate justices are all of American descent and are graduates of Eastern colleges and law schools. The circuit judges comprise two Americans, one Englishman, one Portuguese, and one Hawaiian. The district judges are mostly Hawaiians, but some of them are Americans and English.

There is a clerk of the judiciary department,

with deputies, who are also clerks of the circuit courts. There are also stenographers and interpreters. The executive officers of the courts are a marshal of the Republic (hereafter chief sheriff of the Territory), sheriffs of the several circuits, deputy sheriffs of the several districts, and policemen.

The procedure in the various courts is much like that in the United States. The same is true of the laws administered by the courts. The statute law is largely copied from statutes (State or Federal) in the United States, and in the absence of statute law in a given case the common law is followed. American and English cases are cited, as in the United States. The supreme court law library contains over 5,000 volumes of well-selected law books.

There are also special courts for the trial of cases relating to private ways and water rights. These are presided over by "commissioners of private ways and water rights." These courts are of about the grade of district courts, but their jurisdiction is chiefly in the nature of equity jurisdiction. A general appeal lies from these commissioners to the supreme court.

There are two classes of lawyers, namely, those admitted to practice in all the courts and those admitted to practice in the lower courts only. The former are mostly Americans, but include a number of Hawaiians; the latter are mostly Hawaiians.

To this report it may be added that the foundation of the legal system of the islands is the common law of England, and that the penal laws and

practice is codified, and there are no penal offenses except those enumerated in the code. The civil law in its practice and procedure is partially codified.

In view of the foregoing report it must be considered wise and safe to provide for the organization of the Territorial courts of the Territory of Hawaii by substantially continuing them as now existing under the Republic of Hawaii, and this has been done in the present bill. The reasons also stated in the report for the seperation of Federal and Territorial jurisdiction and the creation of a new judicial district of the United States for the islands and the establishment of a district court sufficiently explain and sustain the provisions for such a court in section 87 of the bill.

The provision in the preceding section 83 for mixed juries is also in accord with the recommendations of the report submitted. The provision in section 83 for a grand jury was for the purpose of providing machinery for the indictment of criminals until the first legislature could perhaps make more permanent provisions, and it was rendered absolutely necessary from the fact that the grand-jury system had not prevailed in Hawaii before that system was rendered necessary by the provisions of this bill extending the Constitution and laws of the United States to the Territory of Hawaii. The same reason—that is, extension of the constitution and laws of the United States to the islands—rendered necessary the further provision of the section providing for unanimous verdicts of juries.

Admitted.

Miss Lewis: Now, for the Court's attention, we have the testimony of Wong, Acting District Magistrate, which was stipulated to subject to certain objections, and I had three sets. I sent back for the third one. I thought I would leave those for the Court's convenience. It is not a new matter.

Judge Biggs: Very well. This is already in evidence.

Miss Lewis: There are certain corrections which you made and you wanted to append a sheet of those corrections. It is all right with me. I don't know where they are myself.

Mrs. Bouslog: Well, I furnished you a copy of corrections that were made. It is in the record, Miss Lewis.

Miss Lewis: I have the three now. Well, I mean in connection with these copies, Mrs. Bouslog. That's entirely up to you.

Judge Biggs: They have already been received in evidence, have they not?

Miss Lewis: They were appended; it was appended to a motion made and then a stipulation incorporated by reference, so this is a matter of convenience.

Judge Biggs: Yes.

Mrs. Bouslog: I will see that copies of correction sheets are attached to it. [8]

Judge Biggs: Very well.

Miss Lewis: Now, I think that possibly these matters should be left until later. I thought it would be appropriate to review this because in and

among the arguments, which I assume won't be transcribed in full if we are making briefs, there are some matters that should go in. I think that that should possibly come later. And also our motions to strike might be renewed at the end of the argument.

Judge Biggs: Well, we will treat your motions to strike as renewed. We will treat them as continuous, as a matter of fact. They can be so treated at least until the case is disposed of. Now, I don't think you need go beyond that, Miss Lewis, or Mrs. Bouslog either. She has certain offers of yours, certain testimony, certain exhibits which were received on the same basis. The Court will treat all motions to strike as outstanding until disposed of by formal order of the Court.

Miss Lewis: Well, in my argument perhaps I will have occasion to refer to them.

Judge Biggs: I was thinking, there is a little question about what you have to say about transcription of the argument. Of course, what Counsel say by way of argument is not part of the record except as it embraces stipulations that are binding. I think in all probability that record will have to be transcribed, that is, the argument will have to be [9] transcribed. Oh, you are referring only to the argument which took place here at the beginning?

Miss Lewis: Yes, your Honor. This is the situation——

Judge Biggs: I didn't understand what you had in mind.

Miss Lewis: If the Court will give me just a few minutes, sometimes considerable time is saved by such review. The Court made a statement from the bench on April 15, 1948, before we went to argument which indicated that we should take up our motions first. That would certainly have to be transcribed. Then we went into the argument and citations of authorities, and I had not presumed that all of that would be written up.

Judge Biggs: I think you are correct about that. I see no point in writing that up since the matter will be thoroughly briefed anyway.

Miss Lewis: However, on the morning of Friday, April 16, according to my notes Mrs. Bouslog secured a ruling that her bill of particulars in one case could be entered in another.

Judge Biggs: Yes, that should be transcribed, of course.

Miss Lewis: Then on the afternoon of April 16, 1948, in the course of her argument Mrs. Bouslog made certain offers of proof, or referred to what she deemed the facts to be, and I feel that should be transcribed.

Judge Biggs: Should be transcribed? [10]

Miss Lewis: Yes, your Honor.

Judge Biggs: Yes, I agree, we agree.

Miss Lewis: On the morning of April 17, 1948, there was a similar matter concerning an offer to show that the Grand Jury as constituted constituted a flagrant violation, and I think that should be transcribed.

Judge Biggs: You want the adjective particularly transcribed, is that it, Miss Lewis?

Miss Lewis: Well, if the Court please——

Judge Biggs: Just a moment. Yes, that should be transcribed.

Miss Lewis: There is some material along that line on that morning. I meant anything along that line.

Judge Biggs: Yes.

Miss Lewis: On April 19, 1948, of course the Court denied our motions and reserved some, and that should all appear.

Judge Biggs: Of course, there is a formal order in each case to that effect, you know.

Miss Lewis: I see. I had not been through that.

Judge Biggs: You haven't seen those orders? They were handed down at that time, at the time we made our ruling. Of course, it should be transcribed as well. It should be transcribed.

Miss Lewis: Then on April 20, 1948,—I think it was [11] possibly the 21st—there won't be any difficulty because I have had that part of the record transcribed. The Court gave a ruling concerning the identity of particular parties.

Judge Biggs: I don't quite recall that. Oh, yes, I do. Yes, I remember. Yes, that should be transcribed.

Miss Lewis: That was before the trial.

Judge Biggs: Yes.

Miss Lewis: Then, of course, the trial opens on the morning of April 23rd and continues through

April 27th, and that would naturally go in in full.

Judge Biggs: Well, of course, all of the taking of testimony, all the evidence will have to be taken, transcribed in full, every bit of it.

Miss Lewis: Yes, of course, your Honor.

Judge Biggs: And the accompanying rulings. In other words, from the point we began to take evidence until the conclusion you will have to have your entire record there.

Miss Lewis: Yes, I understand. But what I did want to suggest was that, although we closed the trial on April 27th, since we have cleared up some of the matters in the record this morning, I think that much of today's proceedings at least should be included.

Judge Biggs: I think so. It will be so ordered. Now, Mrs. Bouslog, what have you got?

Miss Lewis: I have some more. [12]

Judge Biggs: Oh, my apologies.

Miss Lewis: There is Exhibit "N" which incorporates a statement that Captain Seabury testified was made by Makekau and it was real. We shortened the proceedings, as I remember it, and in effect it constitutes what Seabury said Makekau said, and I think that should appear in the transcript. While it is just an exhibit——

Judge Biggs: Now, your interpretation of it now appears. I don't remember the incident sufficiently clearly to be able to characterize it at this time, but you have now characterized it and what you have said will be transcribed.

Miss Lewis: Well, if that is the way the Court wants to leave it. It was just that the exhibits are one set and the transcripts are three. And I thought what was in the nature of testimony that was shortened out in the record not be shortened.

Judge Biggs: You really did not object on the ground that it is hearsay? What you want is to have it shown that it is hearsay?

Miss Lewis: No, if the Court please. I wanted the entire statement actually typed in the transcript.

Judge Biggs: Very well. That is easy.

Miss Lewis: That was the nature——

Judge Biggs: Let the entire statement then be typed into the transcript. [13]

Miss Lewis: That was the nature of it. Thank you. The Court asked us for some summaries of statutes about sentences which Mr. Crockett has prepared here.

Judge Biggs: Yes. Pass them on to the Clerk, please.

Miss Lewis: I hate to take the Court's time with these things but we are under a temporary restraining order and I do think that it would be appropriate to have some setting of time for briefs in that situation.

Judge Biggs: Well, we will set times, approximate times. Let's get the argument through first, and we will do that. Is there anything else along this line? Oh, yes, this particular exhibit which Mrs. Bouslog has offered, the names, the Filipino names, how is it marked?

Mr. Crockett: If the Court please, this is marked "Plaintiffs' Exhibit No. 22-B." I'd like to call the Court's attention that there is nothing either on the marking on the outside or on the note accompanying them which shows by whom these checks were made. And apparently they have just checked the names. It says "Names before which a red question mark appears are probably of Filipino descent." There is nothing to show whether those are persons of pure Filipino descent or persons of anly part Filipino descent, because in the County of Maui there are quite a number of persons who have Filipino names who have descended from Hawaiian mothers and Filipino men. [14]

Judge Biggs: Have you any objection to the form?

Mr. Crockett: Well, I would like to have Counsel state in the record at least by whom these checks were made.

Judge Biggs: Who did the checks?

Mrs. Bouslog: These checks were made by Reverend Yadao, who has lived in the County of Maui all his life.

Judge Biggs: What is the minister's first name, do you remember?

Mrs. Bouslog: Emilio. With consultation with some union representatives who were also in from Maui County. I ask that the Court receive it for what it is worth. I think it appears on its face exactly what it is.

Judge Biggs: Mr. Crockett, you do not object as to form? You merely object as to relevancy?

Mr. Crockett: Well, I object to relevancy, if the Court please, and as Counsel has stated, we object to it, that is, that the Court will accept it for what it is worth. In other words, I can see that there are quite a number of inaccuracies in this.

Judge Biggs: Well, we will receive it for what it is worth, and you may have the opportunity to check through the list and make any corrections, and we will receive the corrections as well, if you desire to file that now. Now, does that conclude what Counsel have to say about these exhibits? Is there any other matter? [15]

Mrs. Bouslog: Both of these should be included in 22. That is part of it.

Judge Biggs: Now, the Court desires to state to the Counsel that in reference to any question which the Court may have in regard to any of these matters, the Court reserves the right hereafter to refer to any standard text or texts or subject matter which the Court may deem appropriate. Now, before we begin the argument, since we have taken a little time on this question of record, it seems desirable to state what the Court has in mind. There are three Judges, and I propose, we propose, when the argument has been concluded, and as soon as copies have been substituted for those exhibits which are exhibits in Territorial Courts, to have copies sent to the Judges, and to have the record transcribed. I mean the record, what would be called the old common law record, the true record copied and three copies made on the mainland in my

office by my office force, or in connection with my office force, so that each of us may have copies, may have copies as promptly as possible and the record may be returned here. How long would it take you, Mrs. Bouslog, to get your brief in chief and your request for findings of fact and conclusions of law filed after this argument?

Mrs. Bouslog: I would say 30 days from the time of receiving the transcript.

Judge Biggs: Very well. Thirty days from the time of [16] receiving the transcript. How long would you need, Miss Lewis?

Miss Lewis: If the Court please, we would like an equal time and I hope the Court will appreciate that we are not trying to take the Court's time for nothing. Here is the situation: we are under a temporary restraining order. I went and asked the reporters how long it would take them to get this out, and they have other work and they said they'd try to get it out in two weeks but it might be a month. So that would be the end of May. And if Mrs. Bouslog says in a month, then we are entitled to equal time. It would be the end of July. And in one of these incidents it will be two years in October, 1948, and we have a two-year statute of limitations. Now, the statute says that if a warrant is issued, the statute does not run. In that case, too, an indictment was issued. But suppose the Court should in effect throw the indictment out, how the statute would apply if we had to change the charge has not been determined

to my knowledge. I feel that we should not get up to that date.

Judge Biggs: Well, we will endeavor—of course, your record here isn't a very big record really. I think that if the reply brief were in our hands or in the Clerk's hands, Mrs. Bouslog's reply brief to your brief were in our Clerk's hands by two weeks after the filing of your brief,—and I think she should be able to meet that date—it would be about [17] the middle of July. And when is your statutory period—October?

Miss Lewis: Well, yes, your Honor. October 19th, isn't it?

Mr. Crockett: Sixteenth.

Miss Lewis: Sixteenth, 1948. I believe by the time we had 30 days to meet their 30 days we will have reached the end of July. So that would be the middle of August, after two weeks for reply.

Judge Biggs: That would mean the Court would have to move fairly promptly in getting this thing in shape to meet that date, to give you any time at all. That would have to be the middle of July.

Judge Metzger: Two months.

Judge Biggs: Two months and a half really. Well, let's see now. Thirty days after the record. That might take a month. That would take the month of May. June, July 15th, and that would leave half of July, August, September, two and one-half months, and will leave you approximately 16 days and no more. It is pretty short.

Miss Lewis: Well, if the Court please, perhaps

I haven't told the Court, if Counsel takes the month of July for briefs, then wouldn't we have an equal time?

Judge Biggs: Oh, yes.

Miss Lewis: Oh, yes, I'm sorry. Counsel takes the month of June for briefs and we would take the month of July, would [18] we not?

Judge Biggs: Yes, you would take the month of July.

Miss Lewis: Then what would follow?

Judge Biggs: Then there would be a reply brief, if Mrs. Bouslog would want to reply to that, and I think she should have two weeks for that. So you then come to August 15th. Let's begin again. Assume that it will take the whole of May to get the record. That would take you into June, July, August 15th for the reply brief. And, as I say, I want the briefs to be accompanied with requests for findings of fact and conclusions of law.

Miss Lewis: Yes.

Judge Biggs: And don't make them too long, ladies, don't make them too long. After all, there is no use writing 180 requests for findings and then have the Court adopt seven or something of that sort. So that we would not have the case under submission until August 15th. And that would leave us only September and October, two months before you have actually reached your expiration date on the statute of limitations.

Miss Lewis: That is why I brought the matter up.

Judge Biggs: Well, all I can say is that the Court will do the best it can. It is not a very long record and, of course, there are some intervening situations which are rather difficult. A conference of Senior Circuit Judges meets, as you know, usually in the third week of September, and our [19] circuit conferences all come before that time. And all the Court can do is do the best it can. Angels can do no more. You pointed out the situation, and we will try to meet it. We don't guarantee to meet it but we will do the very best we can.

Miss Lewis: I will try to get the *reporters get* the record out earlier if possible.

Judge Biggs: Now, I think we have consumed some 40 minutes. We might as well take a brief recess and then start Mrs. Bouslog's argument. The Court will stand at recess for a few minutes.

(A short recess was taken at 10:37 a.m.)

After Recess

Mrs. Bouslog: Your Honors, Hawaii's growth from the culture and crafts of the Polynesians in the early 19th century to the agricultural-industrial empire which it is today is unique. A thumbnail sketch of the history is necessary to understand the facts of the case. The Plaintiffs have put in as exhibits in this case lists of island communities, the 1939 government report to the Congress on the conditions of labor in the Hawaiian Islands. And the testimony of John Reinecke before Judge Cristy supplies some of the facts of this history that are necessary to an understanding of the setting in

which this case takes place. It must be remembered that in the late 19th century, as is shown by these documents, indentured slavery, forced labor still survived in the plantation system in Hawaii. With the annexation of the Territory to the United States in 1900, the protection of the Constitution of the United States was extended in form to the people of Hawaii, but it has not proved to be so executed.

The Plaintiff unions and the individual Plaintiffs are here before this Court complaining about the deprivation of very basic and fundamental human rights which they contend that the Defendants, acting under color of law, have deprived them of, all the matters of which this Court may take judicial knowledge. So that this is not a discrimination against working people and the individual Plaintiffs that came up yesterday, but it has been long continued, that method of jury selections has been long continued in Maui County.

The Plaintiffs come to this Court after appealing vainly to the Territorial Courts for relief. They have pursued every remedy available under Territorial law to the final stage that they can pursue it under the remedies afforded by Territorial law. They can appeal to the Territorial Courts no further without continuing to suffer serious deprivations of Constitutional rights which they contend threaten the existence of the union and the livelihood of the individual Plaintiffs.

The trade union Plaintiffs, and the individual Plaintiffs Rania and Kawano, testified that they bring this suit in [21] their representative capacities as officers and members, and individually for themselves. Their testimony and the testimony of Jack W. Hall, regional director of the ILWU, and Pedro de la Cruz, who was formerly president of the pineapple local on Maui, show the nature of the property rights, and the irreparable injury to the Plaintiffs in this case. The testimony, uncontradicted in the record, shows that the trade union Plaintiffs have spent in excess of a third of a million dollars since 1944 in organizing 30,000 workers in the pineapple, sugar, longshore and various other miscellaneous industries in the Territory; that in addition they spent a huge amount of money monthly for the administration and servicing of these locals. They showed that this money is contributed by the dues of the union members themselves. They show that the purpose of this union is to improve the wages, hours and working conditions of the employees in these industries. They show that there is no other way that the unions can obtain their objective in the Islands except after negotiation and mediation fails, because of a continued refusal to arbitrate any contract issues by the employers. They show that the fear generated by these mass arrests by the Defendants, under color of law, has seriously affected union membership. And the use of the statute, unlawful assembly and riot statute and the conspiracy statute, during

the sugar strike caused fear among the members, and that it [22] actually broke the pineapple strike, all because minor disturbances occurred on picket lines. This loss of the pineapple strike through the use of the technique of mass arrests demoralized the workers, and the testimony shows that the membership on the islands where a great many of the mass arrests occurred dropped from 1300 to 800 as a result of the loss of the strike and the mass arrests.

After the refusal of the employers in the longshore industry to grant the union's demand for parity with west coast rates, the longshore union had but one choice, to strike or to accept the employer demands. And because their negotiating committee in conference decided that it will be suicide in the presence of a threat of these statutes to do anything except accept the terms offered by the employers.

The Plaintiffs have established by the testimony of Mac Yamauchi and by exhibits offered at the time his testimony was offered that 21 workers were charged with unlawful assembly and riot at Lahaina during the sugar strike, and that they were charged with conspiracy, and that subsequently the Defendants conceded the impropriety of these charges by dropping them and proceeding on the assault and battery charges. But this was after the strike was over. The serious felony charge and the conspiracy charge had had its effect in the course of the strike.

Now, the Assistant Chief of Police Freitas stated before [23] your Honors that Mac Yamauchi had

signed a statement saying that he ordered people to go out and beat up a couple of haole supervisors. The record of his statement was before your Honors, and your Honors will find that he said no such thing, and that he told he was the picket captain, that he dispatched groups of men everywhere to check up on the activities that were going on; that he told them to use their own judgment. And when they asked him what they should do if they were attacked, he said that they should defend themselves. But if they were attacked.

They have also established by the testimony of Nicholas Sibolboro and myself, and by the cross-examination of the police witness brought in by the Defendants, that during the pineapple strike on this island a large group of people, 83, were arrested for or under the guise that they were guilty of unlawful assembly and riot; that subsequently, after they had been held all day, they were finally charged with obstructing the highway. And even those charges were dropped at a later time after the strike was over.

The Plaintiff has shown that the mere existence of the statute and its use by the Defendant, as used by the Courts in the Territory, including the Defendant Wirtz, had created a presumption that picketing in any larger number than three is not peaceful picketing because it might turn into an unlawful assembly. [24]

The threatened irreparable injury to the Plaintiff by the destruction of the strike weapon, the

value of property rights to the individual Plaintiffs, was established by the testimony of Jack Hall, whose uncontradicted testimony shows that the union has through collective bargaining and strike actions increased the minimum wage in the sugar industry from as low as 25 cents, including bonus, prior to the first union contract, to a minimum throughout the industry of 78½ per hour under the existing contract. It shows that the daily earnings of plantation labor which were fixed by the Secretary of Agriculture under the Sugar Act in 1943 as a minimum of $1.83 per day have increased to an average of $8.00 a day and to a minimum of $6.28 a day.

The threat of the loss of job, of housing, to the individual Plaintiffs is proved by the testimony of Mac Yamauchi, who testified that ten members were fired by Pioneer Mill Company on the mere bringing of the charges of unlawful assembly and riot, on the guise that people had violated the house rule. It was also shown by the introduction of house rules now in effect in the pineapple and sugar industries that the employers purport to reserve to themselves the right to discharge people for things which they consider morally reprehensible.

Jack Hall also testified that there is no other employment available for plantation workers in the islands. The Court [25] has judicial knowledge of the fact that to daily wage earners the loss of wages during long-extended trial, the cost and time involved in mass trials and appeals, is a serious bur-

den. The Court also had judicial knowledge of the fact that the reputation and good name of any man and his right not to be tried with a serious felony charge of which he is not guilty is a valuable property right.

Your Honors will recall that in the case of AFL versus Watson the Supreme Court considered whether the trade unions in that case who brought suit to restrain the enforcement of the provision of the Constitution had met the strict tests laid down by the court in the Jeannette case for the restraining of the enforcement of the provision of the Constitution, and for and against the criminal proceedings threatened by the Attorney General of the state under the Constitution. And the Court, the Supreme Court, said that the allegations concerning the disruption of collective bargaining, the loss of bargaining position by the unions, the almost certain decrease in union membership, satisfied the strict test laid down in the Jeannette case for the maintenance of a suit in equity to restrain threatened criminal prosecutions under the state law. But the proof does not stop here. They have shown that they come within the rule laid down by the Supreme Court in Snowden versus Hughes, by showing that they as party participants in labor disputes have been singled out from [26] other groups in the community and prosecuted under the unlawful assembly and riot statute as it is applied to no other group or class of persons or citizens in the community.

Mr. Crockett, one of the Defendants, testified that in his 30 years as Deputy Prosecutor for the County of Maui the statute has not been invoked against any other group except participants in labor disputes. The statute lay on the books for almost a hundred years before it was brought out to be used against the labor unions.

In the Plaintiff's argument against the Defendant's motion to dismiss and in support of their request for a preliminary injunction we showed that the Supreme Court of the United States in the case of Bridges versus California stated specifically that no purpose was clearer in ratifying the Bill of Rights than to get rid of the restraints on freedom of assembly which were prevalent in England at the time when the Constitution was adopted. We showed that the Supreme Court referred specifically to the riot act of George I and the riot act of George III. And we have shown that the Territorial riot statute patterns almost all the way through the very riot act of George I, which the Supreme Court said Congress itself would not have the power to adopt in this country.

In the course of these hearings it has developed that there are two other statutes which purport to authorize [27] punishment for rioting and loitering. Section 11733, to which we will refer later, and Section 11711, which provides that every person who is dangerous or disorderly by reason of being a rioter, a disturber of the peace, going offensively armed, uttering menacing or threatening speeches, or other-

wise, is a vagrant and shall be punished by a fine of not less than Ten nor more than Five Hundred Dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment. It is not noteworthy the use of the exact same language that is used in the unlawful assembly and riot statute which is a felony for which a person may be punished by 20 years.

Thus the prosecuting officials and the Grand Jury under the existing statutes can choose whether to charge rioters for exactly the same offense as a misdemeanor or a serious felony, leaving to their sole discretion which groups shall be singled out for the harsh and discriminatory treatment of the felony statute.

In Thornhill versus Alabama the Supreme Court of the United States struck down a statute as un-Constitutional on its face for the very reason that it could be, or that it permitted local law enforcement officers to single out a particular group which might warrant their displeasure. Thus the Court says:

"The existence of such a statute, which readily lends itself to harsh and discriminatory enforcement by local [28] prosecuting officials, against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded as within its purview. It is not any less effective or, if the restraint is not permissible, less

pernicious than the restrain on freedom of discussion imposed by the threat of censorship."

No clear case surely could be made of the singling out of harsh treatment by the Defendants of a particular class of persons deemed to warrant their displeasure than it has been shown here.

Now, let us look at the Paia incident, the incident that occurred at Paia on October 16, 1946. The record shows that beginning September 1, 1946, 20,000 sugar workers in the Territory were on strike. It shows that they went on this strike after a strike vote by which they were authorized by 40—by 97 per cent of the employees in the sugar industry. It shows that at the town of Paia, Maui, where the Maui Agricultural Company is located, that a thousand, one thousand employees are on strike. It shows that in the town of Paia, the people who live in the town are the very people who were on strike, and their families, with very few exceptions of supervisory employees and others. It shows that for the first 45 days of a 79-day strike large groups of picketers peacefully picketed and used the streets for their striking activity [29] without any violence, peaceful activity. And all of a sudden, on the 16th day, the same activity that they had been carrying on peacefully for 45 days became an unlawful assembly and riot. It shows that at the time when this incident is supposed to have happened there were at least 20 police officers present. It shows that there were approximately—the estimates run from 250 to 500 persons. It shows that on the 16th day of October, while this picket line was in motion,

moving, walking picket line, not interfering with traffic, as your Honors could see by the picture, that five strikebreakers and 18 or 20 police officers were present. Now, when the strikebreakers approached the picket line and it did not open up, the police officer called the pickets together so that he could read the law to them. And what did he read? He read the loitering statute, Section 11773, which provides that no person shall loiter or stand upon the public highway thereby imperiling or endangering others; that they, if arrested and found guilty, shall be punished as a misdemeanor and fined not less than 25 nor more than 250, or imprisoned for not less than 30 days nor more than 90 days.

Now, before the pickets had resumed their walking of the picket lines, the strikebreakers attempted to push through the pickets at the point; at that point the pickets pushed back. The police officers told the strikebreakers to go home, didn't tell the pickets to go home. He told the [30] strikebreakers to go home. And the picket line resumed its activity and continued to peacefully picket for the rest of the day. This whole trivial incident took no more than two to three minutes. The Assistant Chief of Police, the record shows, congratulated the people on keeping their head. He congratulated Joseph Kaholokula, named as the first Defendant in this case, for helping him get all the people to listen to him, and told him immediately thereafter that he was glad nothing serious had happened. The only thing he indicated was that two or three of the

pickets might be charged with loitering, with a violation of the loitering statute. With 20 police officers present, not one single arrest was made, until two days later when there were 79 of the people arrested and charged on a sworn complaint by the same police officer that they were guilty of violating the unlawful assembly and riot statute. They were arrested, questioned, without being warned of their Constitutional rights, required to put up bail in some cases as high as a thousand dollars each. And subsequently, after this indictment, these 79 persons, including four who weren't there at all and one who had been dead for five years, were indicted by the Grand Jury of Maui County.

After the Defendants appeared in Court and were arraigned and demurred to the indictment, when the demurrer was overruled, with the permission of the Court they took an interlocutory [31] appeal to the Supreme Court of the Territory. The Supreme Court decision in that case was handed down, I believe, the last part of November. At that time, before the remittitur from the Supreme Court had gone down to the Second Circuit Court advising them officially of the decision in the case, and at a time when this Court had restrained the Grand Jury, the 1947 Grand Jury, from indicting the Lanai Plaintiffs on the ground that the Constitutionality of the statute was being questioned, the method of the selection and composition of the Grand Jury was being questioned, while they were under a restraining order and without the legal

processes of the law they proceeded immediately to reindict 75 people, dropping four people who weren't there the first time but whose rights had been grossly abused for the full year period while they were under indictment.

It seems to the Plaintiff that these facts make manifest a purposeful and wilful discrimination against the Plaintiffs as parties participant in labor disputes. Surely thoughtful and unbiased action on the part of law enforcement officers would have dictated a stay of proceedings until at least the return day on the temporary restraining order issued by this Court. I think there is no better illustration than that of the Assistant Chief of Police and 20 police officers present, who didn't see anything happen, who made no arrest, but not until later, after consultation with the law enforcement [32] officers who weren't present, were the serious felony charges brought.

Now, the Defendants contend that this Court should not hear the Constitutionality of the method of selection of composition of the Grand Jury in case No. 836 because they say the Plaintiffs have either waived their rights or that they can still present them under the doctrine of Carter versus Texas, which invalidates in part the Territorial statute on Grand Jury challenging. The record, however, shows that Judge Wirtz disqualified himself from hearing any challenging of the 1947 Grand Jury because he was a Jury Commissioner ex-officio as Judge of the Second Circuit Court. It also shows

that Judge Cristy was designated by the Supreme Court of the Territory to hear the challenging to the 1947 Grand Jury in the Barbosa and in all other cases. The record shows specifically that Judge Cristy ruled that the proceedings in the Barbosa case, and I quote:

". . . or any other case lying before the Grand Jury, that are considered in this jurisdiction, may go forward."

But apart from the clear record, it was the intention of Judge Cristy and the Supreme Court to determine once and for all the validity of the 1947 Grand Jury. It is obvious that it would be futile for the Plaintiff in the Kaholokula case to appear before the Second Circuit Court, have Judge Wirtz disqualify himself, request the appointment of a substitute [33] judge, and then go through the presentation of exactly the same facts that had been presented, that were presented to the Second Circuit Court in the Barbosa case.

The Civil Rights Act, Section 43 of Title 8, gives to every person deprived of rights guaranteed by the Federal Constitution, under color of Territorial law, a civil action in law or equity. Section 44, which prohibits the exclusion of jurors on account of race or color, specifically reserves the right for a civil suit in respect to jurors, in respect to improperly selected jurors, in regard to race.

Now, in respect to the Lanai case, the Lanai cases, the record shows that from July 10th to July 15th, 1947, the employees of the Hawaiian Pineapple

Company on Lanai were on strike. The Court may take judicial knowledge of the fact that 99.9 per cent of the land on the Island of Lanai is owned by Hawaiian Pineapple Company. The population of Lanai is approximately 3,600. And it is made up primarily of the 1,300 agricultural workers employed by the Company and of the families of these workers. All except a few of the employees live in the town of Lanai City, which is inland five miles or more from the harbor. Now, in these Company towns, your Honor, there isn't anything to do. When you are not working, there is nothing to do in Lanai City. There is nothing to do in Paia. So that all of the activity of the people on strike is to pour into the strike itself. [34]

In the case in which Makekau and four other people are charged with riot and unlawful assembly, we are not concerned with the question of whether or not there was in fact a violation of law. As I believe it was Judge Biggs that said:

> "We are not here concerned with the guilt or innocence of any particular one of the Defendants (Plaintiffs) in relation to any particular incident."

The only question we are concerned with is the taking of facts as they have been presented here, and in their worst possible light is there any justification for charging in the Makekau incident any more than a breach of the peace or assault and battery? No other citizens of the community are sin-

gled out under such circumstances for application of the riot and unlawful assembly statute.

So much has been written about labor disputes, so much has been written judicially, and your Honors have judicial knowledge of the fear of insecurity that drives men to strike in the first instance, and the economic motives which sometimes result in brief episodes of force against strike-breaking. It happens in most industrial disputes, that charges of breach of the peace, assault and battery, are ordinarily concomitants of the economic dispute itself.

But the Defendants in this case, following the established pattern that they had used in the sugar strike, were not content to follow the ordinary processes of criminal law, but [35] they again invoked the unlawful assembly and riot charge. The Makekau incident demonstrates clearly the consistent patterns which the Defendants followed in seeking to punish more harshly parties participant in labor disputes than any other classes or groups in the community.

The harbor incident occurred on July 14, 1947. There were present at the time six police officers and a group of pickets, spectators, and eight Company people who were working in connection with loading. The persons present were estimated by all of the Defendants' witnesses during the hearing before the District Magistrate as being about 120 to 150. One of those witnesses testified that he counted them. Yet Assistant Chief of Police

Freitas appears before your Honors and doubles the top estimate of any of the Defendants' witnesses in the District Magistrate's Court.

On the dock at that time were eleven men, and the record shows 5-day old pineapples, before the strike. A barge dispatched from Honolulu arrived at the harbor. The usual load of this barge is 152 pineapple bins, which is customarily shipped within 48 hours after the picking. When the top Company executives started to load the pineapple, some of the pickets who had been sitting on the walls crossed the kapu line, painted especially for the strike, and started throwing the pineapples off of the bins. You have seen the pictures, your Honors, of the 12 or 15 people at most throwing [36] pineapples off the top of the pineapple bins. The testimony shows that at least three carloads of people, one truck carrying 20 people and two private automobiles, came down after the incident was over. The testimony shows that there were people sitting peacefully on the sea wall at all times. At the very worst the testimony shows that one person received a bump and a bruise, one had jumped or fallen into the water, and some pineapples have been thrown out of the bins.

The police were apparently present not to keep order but as observers and takers of pictures. Three photographers, including the police identification officer, were stationed at various angles. Everyone was peacefully on the sea wall, before, afterwards, or during the incident, was photographed and

charged. So on the basis of pictures concededly taken in the morning and not in the afternoon when the incident happened, eleven Plaintiffs were arrested on the 15th and held incommunicado. They were questioned without being warned of their right to counsel or their right not to testify against themselves, and finally, the next day, released on excessive bail which was miraculously collected in the half hour allowed.

When these eleven people appeared before the Magistrate without being warned of their rights, without being advised of what their rights were, they waived preliminary hearing. It does not even appear from the record of the Court that an interpreter was present or that the Defendants understood [37] English.

Now, on August 1st, 15 days later, 56 other persons were charged by a sworn complaint that they had committed the offense of unlawful assembly and riot by Assistant Chief Freitas. When they appeared before the Magistrate on the 6th day of August, the Prosecutor announced that he was dropping the charges against four persons before the Defendants waived preliminary hearing. One of these four men, Henry Aki, appeared before you. He told you that he was known as a non-union man, that the police officer expressed surprise at his being charged, and that his Company superintendent told him that it was a mistake that he had been charged. It thus appears, then that the test was not being present at the harbor but was being present and being or belonging to the union.

When the Defendants refused on the 6th day of August to waive their preliminary hearing,—a most unusual proceeding of that kind—and demanded that the Prosecution proceed, the Prosecution refused to proceed, although the statute makes mandatory that the Magistrate proceed on the appearance of the defendant to determine probable cause. The Defendants were thereafter, we contend, illegally held. The preliminary hearing, over objections, was continued until the 22nd and again until the 29th of August, and a decision was not made until September 22nd. The whole character of the hearing [38] before the Magistrate can be shown by the suggestion of the Magistrate which appears in the record that the Defendants be excluded from the courtroom because they might be witnesses.

The rolls of film taken by Lieutenant Demello 10 to 15 minutes after the incident were admitted for the purpose of identification of people who took part in the incident, and remained in the record over the objection of the Defendants' Counsel when it appeared they were being used for identification and that they were not scenes of the incident. Stills represented to be made from these pictures were the only identification for a large number of the Defendants.

Police officer Takahama, who testified before the District Magistrate, testified one day that he recognized only seven individuals inside the kapu line among the crowd. After the night recess he re-

turned to the stand and reeled off a list of 27 additional persons whom he said he had recognized going back. Thereafter, the Prosecutor read off the list of defendants named by officer Takahama, adding to that list names that Takahama hadn't mentioned and had the witness identify them. This is all the identification there is of a large number of Plaintiffs. No more than eleven of the Plaintiffs were even cursorily identified in the action pictures or in testimony of witnesses as being inside the kapu line or as doing anything. That is out of the 56, your Honor. [39]

After Defense Counsel called attention to the failure to identify at all or even mention the names of some of the persons charged, the Prosecution moved to dismiss as to 12 persons. Obviously, these 12 persons with the knowledge of the Prosecution had been illegally held without any evidence whatsoever for two months. In oral argument before the Magistrate attention was called to the failure to identify, to the imperfect identification established, and the un-Constitutionality of the statute and its wrong application to the Defendants. Yet the Magistrate, after a month's delay and after he had had an opportunity to study the transcript, found that there was probable cause to believe that a jury would convict the Plaintiffs of the felony of unlawful assembly and riot. Surely no clearer picture of the total disregard of the Constitutional rights of the Plaintiffs could be created. And at its very worst, this three to four minute incident at

the harbor constitutes no more than an offense within the reaches and bounds of trespass or assault and battery, or disorder or malicious mischief in the ordinary confines of the criminal law.

The Defendants contend that the challenging before the Second Circuit Court or the composition of the Grand Jury in the Lanai case is moot, because they say the term of the 1947 Grand Jury has expired. Plaintiffs concede that the challenging for cause of the individual members of the 1947 Grand Jury are no longer in issue. But the Constitutionality of the method of selection and composition of the Grand Jury is still in issue.

The Defendants in the case before Judge Cristy contended throughout that their method was Constitutional, that the Jury that they selected in 1947 was a cross section, that the rules, that the method of applying the statute which they had followed were Constitutional. Judge Cristy ruled that the method followed was Constitutional. Your Honors will recall that in the Thiel case the Supreme Court held that if the method followed violates Constitutional rights by the exclusion of any group which goes to make up the required cross-section of the community, that even if the jury results in a cross-section, that the jury is still un-Constitutional because the method followed was in violation of and totally excluded certain representatives of the community. So we contend that this incident is not moot; for the reasons we have already stated the Grand Jury issue clearly is not moot in case 836 where the Grand Jury has indicted.

Plaintiffs Bill of Particulars filed herein and made a part of both Complaints enumerates the sum of the specifications, of the lack of due process in the hearing before Judge Cristy, and of the deprivation of Constitutional rights in respect to the Grand Jury by the Defendants under color of law. I cannot, your Honor, in the short time here go through the [41] 521 pages of transcript and enumerate one by one all our specifications of bias and prejudice and pre-judging and lack of due process before Judge Cristy, but the heart and substance of the Plaintiffs' case is, and of its claim for relief in this Court in respect to the Grand Jury is that by uncontradicted evidence we brought ourselves directly within well-established and well-defined rules laid down by the Supreme Court for the selection of Grand Juries, and we met the test of these cases, the test the Supreme Court had approved in these cases, and despite that fact we were given no relief. It appeared before Judge Cristy, and the Defendants here concede, that no person of Filipino nationality has ever been selected on the Grand Jury list or summoned as a Grand Juror, or summoned as a Grand Juror in Maui County up to and including 1947. They conceded that there are qualified Filipinos in Maui County.

Plaintiffs showed before the Second Circuit Court that Patrick Otello, who stated that he was of Filipino parentage, who went through the eighth grade in Hana school, who was employed by the Kahului Railroad Company, was marked disquali-

fied by the Jury Commissioners. None of them was able to state any reason for the disqualifying or the marking disqualified of Patrick Otello. None of them knew him. Plaintiffs showed and the Jury Commissioners testified that return questionnaires of haole and representatives of other [42] races bearing exactly the same qualifications on the face of the return questionnaire were marked qualified. Plaintiffs showed that at least seven or eight other questionnaires of Filipino citizens were marked questionable, although according to their return questionnaires they had qualifications equal to or greater than persons actually selected for jury service.

Now, Judge Cristy took judicial notice of the fact that "questionable" as used by the Jury Commissioners meant that they were going to investigate further rather than "doubtful" as is the usual sense of the word. However, it appeared in the record that the Jury Commissioners have no funds to make further investigations; that there is no manner, after a person is marked questionable, of getting him off the questionable list onto the list of qualified for jury service. The only explanation offered of the absence of Filipinos from the Grand Jury, although all Jury Commissioners admitted that there were qualified Filipinos, was by Commissioner Pombo, who testified that they had people who were better. The showing of the complete exclusion of Filipinos from the jury service in Maui County, although they constitute the second larg-

est group in the county, being 18.8 per cent of the population, coupled with the unexplained marking of Filipino return questionnaires, of Filipino persons, as questionable and not qualified, certainly makes out a case of ingenuous discrimination against the Filipino race. As the Court laid [43] down the rule in the long line of cases, from Strauder versus West Virginia, 100 U. S. 303, to the very recent Patton case—as a matter of fact, the Patton case is almost on all fours with the present case. There the judge refused to consider, as did Judge Cristy, that not only were they gross excluded from the particular venire but that no negroes had been selected for jury lists for a period of 30 years. The representative of the State of Alabama made the same argument that the Defendant made about the low percentage of qualified negroes compared with white persons, but the Supreme Court brushed such reasoning aside, saying:

"But whatever the precise number of qualified colored electors in the county, there were some, and if it can possibly be conceived that all of them were disqualified for jury service by reason of the commission of crime, habitual drunkenness, gambling, inability to read and write or to meet any other or all of the statutory tests we do not doubt that the state could have proved it. We hold that the State wholly failed to meet the very strong evidence of purposeful racial discrimination made out by the petitioner upon the uncontradicted showing that for thirty years or more no negro had served as a juror in the criminal courts of Lauderdale County."

And then this is the rule laid down by the court: "When a jury selection plan, whatever it is, operates in such way as always to result in the complete and long-continued exclusion of any representative at all from a large group of negroes, or any other racial group, indictments and verdicts returned against them by juries thus selected cannot stand."

Plaintiffs contended and proved before Judge Cristy and here that the 1947 Grand Jury and the Grand Juries for the preceding five years wasn't just an accident but that it had been a practice and method of selection continuously followed by the same Jury Commissioners, that it was not a representative cross-section of the community, either economically or socially. Judge Cristy accused the Plaintiff of making out of the whole cloth antagonisms and racial prejudices. The Supreme Court has recognized that class prejudices do exist and has taken judicial knowledge of it. Blackstone recognized it. In Strauder versus West Virginia, the Supreme Court said:

"It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy."

Now, we have shown also that in addition to the judicial knowledge that this Court has that class antagonisms do exist, we have shown actual bias and prejudice that exist in Maui [45] County, that

ten of the number on the Grand Jury list were members of the Chamber of Commerce which before the strike adopted a resolution condemning the strike, condemning the union and accusing it of trying to wreck the industry of the Territory.

So that not only do we have a showing of the class prejudice of which this Court can take judicial knowledge but we show actual class prejudice. The foreman of the jury array which indicted the Defendants in the Kaholokula case was one of the movants in the adoption of that resolution.

Now, since there is such a welter of facts and such a short time to present it to the Court, I have prepared three charts which I think the Court can see quicker than I will be able to explain orally, which represent the information.

Judge Biggs: If you need the chart board, pull it over, please.

Mrs. Bouslog: Your Honor, this chart shows a comparison. This chart is made up of information contained in the record before Judge Cristy, and from the record. Chart one shows a percentage comparison of the race of the population of Maui County and of the Grand Jury list for 1947 for Maui County. This follows the census classification of race. The 1940 population, according to the U. S. Census, was 55,980. The Department of Health, the Bureau of Vital Statistics, shows relatively little change in the population of Maui County. [46] Their estimate as of July 1, 1946, being 55,904. Now, this chart shows that in the population of Maui County persons of Japanese

ancestry are the largest group of citizens, representing 24,183 persons in the population or 43.2 per cent. The records already in the Court show those persons qualified, the racial breakdown is practically the same as the census classification. Yet this black line indicates the proportion in the population. This indicates the representation on the Grand Jury.

Judge Biggs: The red line represents the representation of the Grand Jury?

Mrs. Bouslog: That's right. In other words, there are seven Japanese persons on the Grand Jury, or 14 percent of the list of 50, whereas Japanese represent 43.2 percent of the population of the county. The next largest group is the Filipino group which represents 10,509 persons in Maui County. Their representation on the Grand Jury is zero and has been for the last 30 years. Part Hawaiian—that includes, according to the census classification, Caucasian-Hawaiian and other part Hawaiians—represent 12 percent, represent 14.1 percent of the population. Their representation on the Grand Jury is 24.0 or 12 persons. The Caucasians in Maui County represent 12.5 percent of the population. On the Grand Jury the pure Caucasian, 54 percent of the persons on the Grand Jury are Caucasians. The Hawaiian—that is apart from the [47] part Hawaiians—represent 5.3 percent of the population. They are not represented. Other races, including Koreans, Puerto Ricans, all of whom are in the working class of people, represent 3.4 percent of the population. They are not represented. The

Chinese represent 2.7 of the population and they are 8 percent, 8 percent of them are on the jury. I cannot see how it can be said that the 1947 Grand Jury list represents even a near approximation of the cross-section of Maui County along racial lines as shown by the census classification. But for the purpose of the Territory, as Dr. Reinecke testified before your Honor—and it appears in the hearing before Judge Cristy—there are certain practices and procedures in the Territory in regard to race that do not exactly follow the customary and anthropological lines followed elsewhere.

Table No. 2, or chart No. 2. Chart No. 2 shows the percentage comparison of the nationality of population of Maui County, 1940, and the persons on the Grand Jury panel, according to nationality as it is considered in Hawaii, roughly ranked as to socio-economic status. The haoles, as defined in the record here, represent 2,043 of the population or 3.6 percent. On the Grand Jury they represent 42 percent. The Portuguese represent 8.8 percent of the population. On the jury they represent 12 percent. The Caucasian-Hawaiian represent 7.4 percent of the population, and 20 percent of the jury. Other part Hawaiian, that is, other than Caucasian-[48] Hawaiian, represent 6.8 percent of the population. There are 4 percent on the jury. The Chinese represent 2.7 percent of the population, and they are 4 percent of the jury. The Japanese again represent 43.2 percent, and only 14 percent on the jury. The Koreans—and there are Koreans, your

Honor; I believe one of the Plaintiffs is Korean—represent 1.4 percent and no representation on the jury. The Hawaiians represent 5.3, and no representation on the jury. The Puerto Ricans represent 1.9, no representation. And the Filipino, no representatives.

Chart No. 3 deals with socio-economic classes. The tables in this, the figures in this chart are based upon the number of employed males in the population of Maui County. The figure doesn't seem to appear on the table. It is 17,100 something. In the population we have these two classifications that according to the census would ordinarily be put together, but because there were so many of the very most important firms in the economic structure of Maui County, we broke these classifications into proprietors and managers of important firms and/or large branches. Such persons and population of Maui County represent six-tenths of one percent of the population. On the Grand Jury they represent 24 for 1947. They represent 24 percent of the population. On the proprietors, other proprietors, managers, officials and foremen, exclusive of farm foremen, represent 4.9 percent of the [49] population. Their representation on the jury is 40 percent. In other words, combining the top two, roughly 5½ percent of the population is proprietors, managers and other officials, and have on the jury 64 percent representation. Professional and semi-professional in the population of Maui County, 3.2 percent. There are 8 percent on the

jury. Farm foremen represent 2.5, and they are not represented. There were two farmers, that is, persons who owned their farms or run their own farms. They represent 2.5 percent of the population. There were 4 percent on the jury. Clerical and sales, 6.4 percent of the population, 12 percent on the jury. Craftsmen and operatives in the population, in the employed population, represent 18.1 percent, 6 percent on the jury. Laborers other than farm laborers represent 9.9 percent of the population, 2 percent of the jury. Farm laborers, which represent 47.1 percent of the population, and to which almost all of the Defendants belong except those who go in the operative class, totally unrepresented on the jury. Service workers, who represent 4.7 percent, zero. Occupations not specified—there were two, one person was retired and one person was, I believe, in an institution. Now, I want to call your Honors' attention——

Judge Biggs: May we inquire, Mrs. Bouslog, how much more time you will need to conclude? You used 55 minutes.

Mrs. Bouslog: I think, your Honor, that I can finish up [50] in about ten minutes.

Judge Biggs: About how much?

Mrs. Bouslog: About ten minutes.

Judge Biggs: Suppose you see if you can get through in a little bit less than that. These charts will be received not as exhibits but simply as charts in aid of the Court.

Miss Lewis: Could I ask, Mrs. Bouslog, where

the information on Chart 3 came from? I went through the record just this morning before Judge Cristy and it didn't come out.

Mrs. Bouslog: You will find it in the Defendants' exhibits. You will find every member of the Grand Jury classified on Defendants' Exhibit—it's one of the exhibits in the case.

Miss Lewis: You used an exhibit and not the transcript, is that it?

Judge Biggs: Well, we can clear this question very quickly. These charts appear in the transcript, this transcript, the transcript of the proceedings this morning, and it will be written up. These must be written up as charts one, two and three, offered by the Plaintiff in illustration of what the Plaintiff deemed to be in the record. You, Miss Lewis and Mr. Crockett, can check these at your leisure and you may answer by way of brief if you deem that necessary.

Mrs. Bouslog: Your Honor, I want to call attention to the case of Fay versus New York, and Bove versus New York [51] in this connection. It must be remembered that the blue ribbon panel considered by the Supreme Court in the injury case could not exist in the Territory of Hawaii because we are bound by the Fifth Amendment which requires presentment of indictments by grand juries as selected at common law. I call the Court's attention to the fact that this jury, particularly in relation to the economic class, contains about twice as many proprietors, managers and foremen as the

blue ribbon jury in the Bove case. In the tables set forth in that case, it is in the same sense, the classifications are followed as are followed in that table. And I think it shows there were, for example, proprietors and managers which represented 93 percent—9.3 percent of the population represented 43 percent on the blue ribbon panel, whereas here it is 46 percent. And right down the line you will see that this is more blue ribbon than the blue ribbon jury there, although it is conceded that we could not operate with the blue ribbon system in the Territory of Hawaii.

As your Honors are all aware, the Supreme Court of the United States has also specifically condemned the practice of selective members of the jury from the personal acquaintances of the jury commissioners. That was in Smith versus Texas, 311 U. S. 128. And the reason the Court condemned it was because it tends to limit the cross-section that would otherwise be achieved. [52]

The record shows that there are approximately seven thousand male registered voters in Maui County. It is inconceivable that all the jury commissioners know all of those seven thousand registered voters. A check of the transcript—and I will merely summarize this table—shows that Jury Commissioner Pombo knew personally all but ten of the fifty persons on the jury list. Chatterton, Jury Commissioner Chatterton knew all but nine of the persons on the jury list. Judge Wirtz knew at least 60 percent personally of the persons who were on the jury list. So that it becomes apparent that the

jury is hand-picked in the sense that they are personal acquaintances of the members of the jury list. Interestingly enough, the record shows that the individuals that the Jury Commissioners did not know were those who came in the operative craftsmen and operatives class. All the business people they know, but they did not know the craftsmen, the operatives or the semi-professional workers who occupied lower positions on plantations.

I think, your Honors, that I will not have time to summarize the standards used by each one of the Jury Commissioners as shown by the transcript.

Judge Biggs: You may cover it in your brief. You will cover it in your brief.

Mrs. Bouslog: Perhaps your Honor doubts the sincerity of the Plaintiffs' fears that their rights will continued to [53] be denied, that these juries will indict, or that they will be convicted by these juries of the felony of unlawful assembly, but the record in Hawaii, as shown by the records in the Supreme Court, shows that this discrimination against labor, the harsh meting of penalties, is not something that was evolved yesterday or by these Defendants here, but that it has continued for a long period of time. At Hanapepe Bay in Kauai in 1924, sixteen strikers were shot. I believe six strikers were given, served four years prison terms. During the Maui Filipino strike, after the strike leaders—I believe Mr. Crockett referred to that case—the strike leaders received a 5-year sentence. Even a newspaper editor who came to his defense was jailed for criminal libel for attacking the bad

faith of the companies in a quite remarkable decision in which the Supreme Court held that the burden of proving his innocence was on the defendant in a criminal libel case. And in the Hilo massacre of 1938, where 50 unarmed men, women and children who weren't even on strike, were shot and bayoneted by deputised police officers, not one single officer, not one single person was ever charged as a result of that shocking incident. As a matter of fact, the persons injured were not even able to collect damages in civil suits in the Territorial Courts.

Plaintiffs don't contend before this Court, and they have contended in no Court of the Territory, that pickets [54] are immune, or persons in labor disputes are immune from the processes of the criminal law. But what we are attacking is the whole basic feeling that picketing and strike activity is a conspiracy. If an individual is guilty of assault and battery, he should be charged with assault and battery. If he is guilty of the breach of peace or of profane language, he should be so charged. But the theory which makes every picket line a conspiracy, every group of working people an unlawful assembly because they have a mutual purpose, that is where the deprivation, the serious threat of the rights of the Plaintiffs, the serious threat against the rights of the Plaintiffs exists, because of that theory of conspiracy behind picket line activity. I believe that the working people, the classes who are unrepresented on the jury, are entitled now to the protection of the Constitution.

The Territorial officials have had since 1900 to work out a method of selecting representative juries, but this jury represents not only the 1947 jury but the juries like it through the years back. All of the Plaintiffs, your Honor, belong to the classes and to the races who are unrepresented on the jury, both economically and racially.

Judge Biggs: The Court will recess for five minutes.

(A short recess was taken at 11:55 a.m.)

After Recess

Mr. Crockett: If the Court please, the Defendants would like to divide the time between myself and Miss Lewis. And I shall endeavor to establish a new record for brevity. The drama has been unfolded before the Court during these few days of trial, and apparently, as the Prosecuting Officer of the County of Maui, I seem to be the villain in the case. I assure the Court that I at all times, and I think the other prosecuting officers, have certainly endeavored to see that Constitutional rights not only of the laboring men but of all people, those who are on strike, those who do not care to strike, and in every class, have been protected as best as I could see that they were protected.

And in this particular case, if the Court please, it is not a question of trying to break any strike or to bring about any pressure against it. It is simply trying to enforce the laws as they are

written in the books of the Territory. And those laws, if they are improper, there is due process by which they can be reviewed and taken off the books.

The issue in the case, if the Court please, can be summed up into two. First of all, whether the Grand Jury is illegally constituted, and second, as to whether or not the several incidents with which these Defendants have been charged constitute actual criminal matters which should be left to the discretion of the criminal courts of the Territory.

In regard to the constitution of the Grand Jury, we submit, if the Court please, first of all that the burden is upon the Plaintiff to show that this Grand Jury is illegally constituted, to show not merely that there is a disproportion in the numbers, but to show that that has been a purposeful discrimination. That is the rule which has been established by the Fay case. And without reading this case, if the Court please, I submit that the facts in this case show no more than was shown in the Fay case, and where the Supreme Court said on page 291 of that case,

"At most, the proof shows lack of proportional representation and there is an utter deficiency of proof that this was the result of a purpose to discriminate against this group as such."

The three charts which have been presented to the Court this morning are absolutely immaterial and have no bearing whatever upon the issues in the case for the reason that they are based entirely

upon the population of the County of Maui and not upon the citizenship. Right at the very outset they show that they are absolutely worthless, because it is a well-known fact that, as shown by the records of this case, out of the ten thousand Filipinos which Counsel claims that are on the Island of Maui only 187 of them are qualified voters of the County of Maui. And yet the chart is based upon the population and not upon the percentage of voters. [57] And every comparison there is a comparison of the number of persons on the Grand Jury with the entire population, while the Supreme Court in all of these cases is concerned not with the percentages of population but percentages of persons who are qualified as voters, qualified as jurors. And the first qualification is that they be citizens of this country. We submit, if the Court please, that there is no showing that any large numbers of the Filipinos are qualified to vote. Counsel said, qualified to serve as jurors. Counsel stated in her argument that we had conceded that that was true, that there were qualified Filipinos. And we submit, if the Court please, I don't recall any time except on my testimony from the witness stand, and I said that in 1948, after some Filipinos had been naturalized under the new laws of the United States, that a few of the leading Filipinos were found to be qualified. But that, of course, could not have been reflected upon the jury which was selected in 1946 to serve for the year 1947.

The Plaintiffs not only failed to show any pur-

poseful discrimination but they have failed to show that there has been any systematic discrimination, and they have further failed to show that the Filipinos are entitled to representation as a national group. Why should the Filipinos be entitled to separate representation from any other Oriental group? It is as much to say because there are large numbers [58] of Germans or Scandinavians in some particular section of the country that they must each be represented in proportion to the number within that community. Unless that would probably be true if there was a definite and purposeful discrimination, a systematic discrimination, as the Supreme Court has continuously pointed out. That, we submit, has not been shown in this particular case.

It is for this Court to determine whether or not from all of the facts before it a truly representative Grand Jury has been selected. And I submit, if the Court please, that the record shows that based upon the testimony of Judge Wirtz, who was disqualified because he actively engaged in the selection of this jury, that the Jury Commissioners felt that after they had gone over the list, made out this list, that they had picked out a list which was representative of that community. And I'd like to simply refer the Court to the testimony given by Judge Wirtz, which is found on page 235, where he asked, where he was asked a question: "Is the jury list a true cross-section of the community?" And he stated, "I feel that it is." And that was a question which

was propounded to him by the attorney for the defendant on the trial of that issue.

Now, coming to the second issue, if the Court please, of whether or not the several incidents present a criminal matter which should be tried entirely by the criminal courts [59] of the Territory, Counsel has said she has exhausted her remedy and relief in the criminal courts when a portion of these Defendants, if the Court please, have not even been brought before the Grand Jury. The Grand Jury has not even considered their cases. And, although she has pointed out and brought before this Court some individuals who perhaps were not properly identified or were not shown definitely to have had a part in those incidents, nevertheless perhaps that would be screened out by the Grand Jury. So that we submit they have not exhausted their remedy, in the criminal courts of the Territory.

We contend that the several incidents do present criminal matters, and these criminal matters should be left for the determination of the criminal courts of the Territory.

The Paia incident shows that there was violence. The testimony is clear, that prior to October 16th the police made no interference with the picketing activity, that parades were staged, that picket lines were established, that even homes of individual workers were picketed. And yet there was no offense committed. The police made absolutely no action, took no action, and made no charges against any of the pickets. On the morning of October 15th

an appeal was made to the police by persons who did not adopt the same views towards the strike as the strikers did. They stated to the police that they wished to go to work, and they told [60] the police why they wanted to go to work, that their families were suffering from lack of food and that the union officials were unable to carry out the promises that they made in regard to the supplying of food, and they felt it was necessary for them to resume their work and their activity. And as a result of that, they appealed to the police to please escort them across those lines in order to get back to their work.

The police allowed one of the leaders of the union to come and talk to them, and as a result the men went home. He said, "But I am coming back tomorrow morning." And what happened when he arrived tomorrow morning? That was not an incident that the police stirred up. But here was a man and four others who were trying to get back to work. They ganged up and refused to allow him to go across. The police didn't use any blackjacks. They didn't use any guns or any knives or anything like that. Captain Long stated that he walked to the road, on the other side of the road to where one who was standing and said, "Open up the lines, please, so that these men can go through." And what happened? He said that immediately the whole crowd ganged together in a mass and pushed, and ultimately pushed the officers back. Now, that was a criminal incident, if the Court please.

Whether they were charged with riot or unlawful assembly or loitering or any other act, if the Court please, it is a matter for the criminal courts of the Territory to pass upon. It is a matter [61] to be submitted to our Grand Jury. It is a matter for the jury to pass as to whether or not the Prosecution perhaps have requested a little bit too much. That is for the criminal courts to pass upon. And we submit, if the Court please, that this Court should allow the criminal courts to pursue their ordinary process.

Taking the second incident, the incident at Lanai, on the wharves, there was not even a case of trying to cross picket lines. Certain men were at work trying to preserve the fruit which had already been picked and which was spoiling on the wharves. And these men, the men who have been charged in this case, gathered there in a group and at a prearranged signal rushed across these bins and didn't only do as Counsel would have the Court believe, spill a few pineapples on the docks, but they jumped and climbed on top of the bins and beat up one of the men who was there. That testimony is set out in detail in the testimony which was taken in the Aglian case by Harrington, Jerome Francis Harrington, who testified that he was the man up on top there, and a half a dozen or more got up on top of him and knocked him down, and with his face down on the pineapples, they tried to beat him up, and beat him about the body.

Fernandez was forced to jump off the crane and

forced into the water. Whether he was pushed off or whether he jumped off, it makes no difference so far as this Court is [62] concerned. It was particularly mentioned that the throwing of pineapples constituted a rather serious phase of the case. I think it is still part of the laws, not perhaps of law but the tradition of the United States, that a man who has glasses on, you usually give him a chance to take off the glasses before you sock him on the jaw. And if a man falls down on the ground, you give him a chance to get up before you beat him. And I submit, if the Court please, that a man swimming in the waters of a bay like Kaumalapau is in a much more helpless position to defend and protect himself than a man who has fallen into the ground, and he is in no position to dodge pineapples that are thrown at him. And if one of those pineapples would have struck him on the head and he had sunk down to the bottom of that bay, we'd probably be trying some of these persons for murder instead of the charge with which they are charged.

The Makekau case is practically a parallel case. There was no picket line there established. But on the day before, by the testimony of Makekau himself, these strikers had agreed that the next morning they are going after these particular persons. And they arrived there and they beat them up. That constituted a criminal incident, not peaceful picketing. It was purely a crime, and these persons, if the Court please, we submit have all been charged

before the Courts of the Territory of Hawaii not as strikers, not because the police are [63] trying to break up the strike, but simply, if the Court please, because they have violated the laws of the Territory of Hawaii. And we feel that those matters should be investigated by the Grand Jury. It should be submitted to the Court for decision. And we submit, if the Court please, that there isn't a single bit of evidence here that they won't get just as fair a trial in those courts as they will get in any court of the United States.

Counsel claims that by the course of these incidents, the course that the Prosecution has pursued in many years, that there is discrimination; that the only time the unlawful assembly law has been brought into play has been in cases involving labor. The Court is well aware of the fact that it is not often that large masses of persons gather together and that there is tumult and violence in the ordinary gathering. And they have failed to show that there have been any other incidents of similar nature occurring other than in labor trouble. And we submit, if the Court please, that that is not sufficient to show discrimination. They must show something more definite than just mere conclusion that because the occasion has occurred for bringing this type of case against the strikers—they must show that there were criminal and other incidents that occurred which are similar and that a similar charge should have been brought against them. [64]

As for the claim of irreparable injury, there is

only the conclusion of Mr. Hall and Kawano and Rania that the charges brought against these persons will produce the results which they claim. And that is offset by their own testimony that even after the charge of unlawful assembly was brought to their attention, by being made in the Paia incident, yet 90 percent or more voted in favor of the second strike.

So we submit, if the Court please, that the facts which have been produced in this Court show conclusively that there were violations of the laws of the Territory of Hawaii, and that there has been no discrimination against Filipinos, as such, either in calling them to serve upon the Grand Jury or in the prosecution of these cases by making charges of riot and unlawful assembly, and that this Court should, upon the evidence adduced, permit the Prosecution to go ahead in the prosecution of these cases through the ordinary processes of law.

Judge Biggs: Miss Lewis?

Miss Lewis: If the Court please, I am not going to argue about the jurisdictional amount. Some attention was paid to it by Mrs. Bouslog. I feel the Court is going to review that ruling in the Mo-Hock case about the application of paragraph 14, and we at one time went into the whole legislative history and will be glad to append a statement [65] in our briefs because, frankly, we were very much surprised at that ruling and we feel that people of this Territory should have all the civil rights that any other people have. But if jurisdictional

amount has to be established in this case, I submit it has not been established. However, it is not a matter I want to take up at this time.

Now, I will endeavor, without repeating what Mr. Crockett said, to lay out the bones of this case and to see where we are. And in doing that I would first like to take up those Plaintiffs who are Defendants in the criminal courts of the Territory. Now, here we contended that equity did not intervene usually and that the statute, Section 265 of the Judicial Code, applies. And the contention was that this was so exceptional, such a peculiar case of clear and imminent irreparable injury, that the Court should not follow the usual rules. Now, what do we have? We have no showing that these people are in danger of losing their employment. There are other instances shown that Pioneer Mill Company, at the time certain charges were brought, whether it was because they were charged or because that incident involved a beating of supervisors is not shown, but certain people were dropped by the Company. And yet Mr. Yamauchi, when he appeared on the stand, was still employed by that Company. So we must assume he was reinstated. However, what do we have in our own case? Because, after all, we are trying a specific case. It is stipulated that every [66] one of these people when they brought these actions was employed by these same companies, namely, Maui Agricultural Company in one instance and Hawaiian Pine in the other. Now, they had already been charged in the

criminal courts some time before they brought these actions. So that is strictly in the red herring field, I submit, your Honors. There is no showing of an irreparable injury in that respect.

Now, we were also told that the first amendment cases stood on a different pedestal. Those rights of free speech and free press and peaceable assembly, which undoubtedly are dearest to the hearts of all Americans, should be treated in a different category, we were told. We felt that the rules of procedure still applied and we argued to your Honors that that was true, that we could not operate a system of Territorial Courts, administering the criminal laws, unless the usual rules apply. Now, we find that we haven't got any first amendment cases, your Honor.

We have proof that there were three definite incidents. In the Paia incident, the peaceful picketing which the Plaintiffs' film showed to have gone on day to day without any intervention or obstruction by the police had stopped when this massing occurred for the purpose of throwing the scabs back so that they could not enter.

In the Makekau incident there never was any peaceful [67] picketing as far as the record shows. They just went up there for an express purpose of violence. And at the wharf the record shows there was picketing for a short time and then they all sat down to wait for the barge to come in, the tug and the barge, obviously so that they could put on what afterwards followed. And in any event, in none

of these cases has any Defendant in this case, any of the prosecuting officers or the police, shown any confusion at all as to where the incidents began which involved violence and the peaceful picketing stopped.

So why these first amendment cases? What right, of free speech or free press or peaceable assembly, are these defendants trying to protect? What right are they trying to protect in these particular cases? We have to get down to facts. The Plaintiff may say, but that is your side of the case, we don't concede; our side of the Paia incident is that they didn't mass to throw those scabs back, that the officers called them. But, your Honor, this is for a jury to decide what happened there. Surely this Court is not going to receive cases of this kind for the purpose of pre-judging in equity without a jury as to the disputed questions of fact. And Counsel herself said that the guilt was not in issue here.

Now, I think Mr. Crockett has covered the matter of the claim that certain persons were not present at all. I do not [68] see how that goes to the question of the Constitutionality of the statute. Where there is an indictment, the law is well settled, that it is not to record on collateral facts, to go behind the indictment, one of the cases being the case of Theodore Roosevelt Potts which I think one member of the Court has mentioned, and another I have cited. We will take that up in our briefs.

Now, in some instances, because of the Restraining Order that was issued, we now proceed to the

indictment, and I submit that those cases are really premature in any event. We do not know what the Grand Jury would do. But we do know, and it is shown in the record, that these people who claim they were not present did not choose to testify at the District Magistrate's hearing. Some of them didn't know what they had told the police. Some of them actually have been dropped. It is absolutely untrue that the Grand Jury ever indicted a dead person, and the record of the indictment referred to shows that the foreman of the Grand Jury had struck the name out. So that this is all a side issue. It is an attempt to confuse this case, to try to get this Court to take up issues of individual guilt which are not before the Court but which will be taken care of in due course in the criminal courts of the Territory. I could review all of those cases man by man, but I hardly think that I could take the Court's time to do that. So I do not see any reason [69] for diverting from the usual rule in these cases.

But what is the claim of un-Constitutionality in any event? After all, that was the original proposition. Now, I will get into the charge of the discrimination that has come into the case later.

Originally we were charged with using un-Constitutional statutes. Now, all that Mrs. Bouslog has ever argued about, the unlawful assembly and riot statute, was that it resembled an old statute of George I, and we are supposed to believe that there was some British influence here in the old days

and that the statute has been slumbering ever since and nobody, until Mrs. Bouslog brought it up, had ever considered that statute in modern light. Well, that is simply not true, your Honors. In the first place, the statute of George I was a statute dispersing assemblies on the mere belief of an officer that they had an unlawful purpose not outwardly manifested. And yet in the questioning Mrs. Bouslog herself established that there was no order of dispersal in any of these instances. So why have we been going up and down arguing about the rights of others and the orders of dispersal? The only question raised as to the statute—I can see where Mrs. Bouslog, if there were an order of dispersal, would like to argue that the peaceful picketing, which might have been resumed afterwards, was thwarted, and she would thereby attack the discretion used by the officers, although our statute [70] affords protection against such matters. But in any event, it simply isn't in the case. We don't have an order of dispersal case. We have a question for a jury as to whether the assembly had proceeded to that point at which there was terror to the populace, and that is a question that this Court should not take away from the jury.

Then as to the conspiracy statute, Mrs. Bouslog did not take it up again but in her previous argument she was concerned only as to one part of one section following a semicolon. We had preceding that a statute, as the Court will recall, that related to conspiracy to commit an offense, namely, act of

violence. And I submit that in the case of the Paia incident, where that statute is invoked and the only instance in which it appears in the record that the conspiracy statute is involved, is that the evidence gives good justification for or probable cause that a jury might find a conspiracy to commit acts of violence because Mr. Kaholokula at the time told the boys to remember what he told them last night. And all of their actions showed a preconceived intent. In fact, the previous conversations show that.

Then we have also a question of conspiracy to instigate others to an offense, namely, acts of violence which fall in the same category.

Now, is this an instance so exceptional that the Court should violate the usual rule of leaving the matter to the [71] criminal courts because there may be some third part of the statute which relates to something else, namely, the malicious concerting together to do what is obviously and directly wrongfully injurious to another? I submit that it is not. In any event, they ought to stand trial for conspiracy, and whether the conspiracy which the Court should leave to the jury to consider should include merely conspiracy to commit acts of violence there at Paia or whether it should include something more——

Judge Biggs: Just a moment. Proceed please, Miss Lewis.

Miss Lewis: ——the parts of the statute that have not even been attacked should be presented in

a criminal court of the Territory anyway. And whether another part should or should not also be left to the jury to consider is a matter which that court can take care of in that case in connection either with a charge to the jury or the pleas to the indictment which have not even been heard. And that brings us squarely within the Petrillo case. But this being an equity case, I submit to the Court that it is in any event not such an exceptional matter that that one clause is something that has not been adjudicated specifically in that particular matter. It is not so exceptional or rare as to take the whole case away from the Court of the Territory or the jury.

Of course, some reference has been made to the antiquity [72] of these statutes, and the Court itself remarked that it was unusual to give examples but I have shown by the documents that have been submitted this morning, and I have a memorandum which I might leave with the Court—it refers to those documents—both the conspiracy and riot laws which were drafted by William Lee, a Harvard Law man of considerable attainment and the first Chief Justice of the Territory. In any event, they were transmitted to Congress by a commission which had gone through every one of our laws and had marked some for repeal, such as the statute on seditious offenses which was repealed by Congress, and Congress continued the rest of them in effect including this one but said that they must be not inconsistent with the Constitution or laws of the

United States. I am not representing that Congress endeavored to take the Constitution away from anyone in this Territory. We have in the martial law case presented just the opposite, as Judge Metzger will recall. But the point is that those persons who reviewed those laws did not see any occasion that they should be repealed, although they did see occasion to repeal certain other statutes such as the seditious offenses and that they did this work with considerable thoroughness.

Now, I would like to go on in the remaining time from the cases of those Plaintiffs who are individually Defendants in the criminal courts of the Territory to the other aspects of the case where Counsel for the Plaintiff seeks to give [73] this the aspect of a continuous scheme of action by the Defendant Prosecuting Officers reaching into the future, which should occasion the intervention of this Court. Now, what do we have? We have the testimony of Jack Hall that the union wants to carry on general picketing. And then he said, "Maybe some outsiders would stir up trouble." Well, that is pure speculation, your Honor. I again have to refer to the case of Watson versus Buck because it is so well-known and has been cited in a very recent case, the United Public Workers case, and I would like to hold that before the Court as a yardstick as we go along, because the Court said in that case,

"A general statement that an officer stands ready to perform his duty falls far short of such a threat

as would warrant the intervention of equity. And this is especially true where there is a complete absence of any showing of a definite and expressed intent to enforce particular clauses of a broad, comprehensive and multiprovisioned statute."

And then they go on to sum up the thought in this way:

"The imminence and immediacy of proposed enforcement, the nature of the threats actually made, and the exceptional and irreparable injury which complainants would sustain if those threats were carried out are among the vital allegations which must be shown to [74] exist before restraint of criminal proceedings is justified."

So with that yardstick I submit, if the Court please, that there is no proof whatsoever that any one of the Defendants has ever threatened to interfere with general picketing. And the Court has seen for itself that general picketing was carried on day after day without any such interferences.

As to this fictitious case that someone might stir up trouble, of course that is just a case that would have to be judged as to who is responsible, who was guilty for any trouble that occurred there. It is a pure speculation, it is not in the nature of any threat, I submit, from Mr. Hall's testimony to interfere with rights of these parties.

Then Mr. Rania and Mr. Kawano used mere conclusions that the members were in fear. We were not told what they were visualizing that they would do, and since we are not told that, we do not know

what the Defendants' prosecuting officers would do about it. We have a complete absence of showing of threats to interfere with these Plaintiffs because they have not chosen to tell this Court precisely what it is they want to do except that Mr. Hall said they wanted to carry on general picketing.

Mr. Kaholokula was talking about one particular incident and it did appear from his testimony that there was a feeling that mass violence could be used to prevent persons from [75] going to work who wanted to quit the strike, because he said, "We were 400 there and they were 5; how could they bust through?"

But in general we are left where we were before we went to trial. We are left to speculate as to precisely what the Plaintiffs want to do, and so we do not know what the Defendants would do in that situation. Now, there are only two alternatives, since we are still speculating as to what they want to do: one is that they just want to picket around the entrances, moving up and down in the usual form of pickets, and if so, we won't have any trouble. It is very obvious that the Defendants have no intention of interfering with them. The other possibility is that they do intend to go out and repeat what has happened before, and that they take the position that they will use mass violence whenever they find anyone working, be he union man or supervisor or someone who is not in the union. That is the choice that we are left with, because we are not told and we have to speculate on both possibilities.

Now, I have covered the first one. There won't be any trouble at all. The Defendants will not interfere with any peaceful picketing. As to the second, if the Court please, there never was such a case brought as that. Mrs. Bouslog stands here and says to this Court, If we have trouble, all right, we'll stand trial for certain minor charges, but this statute is too much. That is the way I understand the case [76] that is presented in that phase of the matter.

Now, what is the right that they are seeking to vindicate here, your Honor, in that status of the case? I feel that we just have to open up and lay out the bones of this thing. Equity does not take a case merely to test the Constitutionality of the statute, the criminal statute. Now, that is the first principle, as the Court told me on the first day, ought to assume that the Court knew the first principle. All right. What are the exceptions? The exceptions are interferences with some property right so that a person cannot carry on and enjoy his property rights, or, as the later cases have indicated, a personal right such as free speech or peaceable assemblage. And I would like the Court to know that we are not arguing about the old rule of property rights being extended to personal rights because obviously personal rights are as great or greater than property rights. But we still have to find out what those rights are that they are trying to vindicate here.

Now, what is it again that they want to do that

they have a right to do? And the intention to go out and use violence is not a right which can be asserted because there is no such right. So we are completely lacking in the impact between something that the plaintiff in equity has a right to do and that the statute interferes with, because they have no such right if we assume that feature of the case.

Now, even Professor Borchard, who is the prime advocate of adjudicating almost everything in its hypothetical state that is possible—and the Supreme Court has not followed him—but even Professor Borchard has made a distinction such as the one I am trying to make here, because he said in his article in 52 Yale Law Journal, 445 at page 478, which the Plaintiffs have cited,

"In these cases injunction is common, provided irreparable injury is shown, since these offenses are of a kind that are malum prohibitum, where no public purpose is impaired by adjudicating the construction of the statute before the offense is committed and without compelling the commission of an offense as a condition of adjudication. These considerations are absent in the case of crimes that are mala in se. If a person is about to commit murder, robbery, or any other felony, no one would suggest that he obtain an injunction or a declaration before commission of the offense to find out what the statute means."

I don't see why the Constitutionality would be any different. In other words, the Court is being asked on that assumption, which I necessarily must

make because we are not told what the Plaintiffs have done, but on that assumption the Court is being asked to give them greater assurances of impunity and immunity from prosecution for their acts of violence. [78] And the Court would actually aid them in carrying on acts of violence with more comfort in the future. And I again submit to the Court that there never was such a case entertained in a court of equity.

In Hague versus C.I.O., as an example of complete contrast, what do we have? We have allegations in the bill, as the Supreme Court recited, that all the activity in which the plaintiffs seek to engage in Jersey City were and are to be performed peacefully, without intimidation, fraud, violence, or other unlawful matters. And then we come to the findings of the Court, with which this Court is certainly familiar, and the Court found that the persons affected, who brought that suit, were acting in an orderly and peaceful manner. The Court found there was no competent proof that the proposed speakers whom the plaintiffs said they wanted to use had ever spoken at an assembly where a breach of the peace occurred, or where any utterances were made which violated the canons of proper discussion or gave occasion for disorder. So that was the case of the plaintiff in Hague versus the C.I.O. It is not the case of the Plaintiff here, apparently.

If the Court would need a rule or a maxim on which to fasten the matter, I feel it is really a

matter of common sense. I would submit the clean hands doctrine which I mentioned earlier, and now we have facts by which to judge the application of that maxim: he who comes into equity [79] must come with clean hands. And I cited to the Court earlier the case of Buck versus Gallagher, 36 Federal Supplement 405, in which a 3-judge court, with the opinion written by Circuit Court Judge Haney of this Ninth Circuit, held that where plaintiffs were engaged in a monopoly which was against the anti-trust law of the United States they could not test the Constitutionality of a Washington statute which was directed to certain particulars of their actions. They were out of court because in any event they were in violation of the law. And we put this case in the same category.

As to the claim that has been made of indefiniteness in the statute, if the Court please, that is a claim that is not tested in equity. Mrs. Bouslog cited the Thornhill case. That was a case of an appeal from a conviction. And the Court points out specifically that the lower court had not narrowed the statute to something which was clear and definite but had applied it holus-bolus. Incidentally, that was a loitering law. They had applied it to all acts including those that were lawful. And so when the matter came up for review of the conviction, of course there was an element of illegality that had crept into the record.

Now, this matter is very clearly explained in the dissent in the Musser case. It is a very clear treat-

ment of the earlier Thornhill case, and some other cases where the court explains what the difficulty is in those cases, that the [80] criminal court that tries the case has not saved the statute from its indefiniteness. But what is the situation in a court of equity on the contrary? How could a person come into a court of equity and say, "I fear the application of this statute because it is so indefinite that I don't know whether it applies to me?" He necessarily in a court of equity does know or does not know whether it will apply to him. That is not a matter which equity can judge in advance but it is a matter which comes before an appellate court on review of a conviction, why it is necessary at that time to hold up in the one hand the record of what the proof was and what was submitted to the jury to decide, and in the other hand the statute. You see whether it did give sufficient warning to the defendants that they would be tried on those facts. That is an instance that cannot be prejudged in a court of equity.

Now we come to the question of discrimination which Mr. Crockett has already given the Court considerable—I believe I have ten minutes.

Judge Biggs: Yes, if you need that much.

Miss Lewis: Yes. We have submitted before that this was not alleged but we tried to meet it anyway. I feel we had no warning of it, but let's proceed from there on. I cite to the Court a decision by Judge Yankwich, that the defendants who were guilty were not to be let off because [81]

other persons were not prosecuted, even if that were deliberate. But coming further down the line, there is no proof here of a deliberate failure to prosecute others because there is no showing that other facts occurred which required the invocation of the statute and that they were deliberately ignored. Now we get into a little change in the thought at this point. Sometimes I think Counsel for the Plaintiff is talking about that type of thing that is where over and over again, as an example, Chinese gambling dens were raided and nobody else was, and it was proved that there were other gambling dens. It was a simple fact. And here, of course, we have a very complex state of facts involved in the type of statute that we have. It is obviously hardly susceptible of proof. None has been offered. But in any event, at other times we seem to be getting over into another type of thought which is also not alleged. Apparently there is some attempt to persuade the Court that the Defendants in this case, the Prosecuting Officers, are not proceeding in good faith, that they do not have the facts to back up these charges. Well, we have been in here and we submit we have shown probable cause for each and every charge sufficient that a jury should decide the conflicts in the testimony. Hence, why go into questions of bad faith? Well, the Plaintiffs will say, maybe in those cases it is one thing, but how do we know what you will do in the future? Again, it is purely speculative. [82] And how do they try to show that? They try to

bring in a number of incidents from Honolulu, if the Court please, where honestly it was difficult for us to decide whether to go all the way down the line and meet all of this or to simply submit to the Court that in any event it was not peaceful picketing. That we did prove. We went that far. But we could not see how we could take the Court's time to go all the way into those incidents. We showed in both cases that they tried to bring in from Honolulu that they were not peaceful.

Now, what are we going to conclude on Maui County as to how it is in Honolulu? I feel that that should be struck out. The Attorney General has supervision over prosecuting officers, but there was no offer to show that the Attorney General either directed the charges to be made or that he directed them to be Nolle prossed here in Honolulu. And the Plaintiff could have shown that. They could have called the District Court Prosecutor or the officials of the Public Prosecutor's office of Honolulu City and County who handled the cases. But they did not choose to do so. In any event, it becomes further and further from the point because the Defendant, Walter D. Ackerman, Jr., was not Attorney General then. He took office some time later, October 14, 1947.

So I say, that when we get right down to the essentials we have an attempt to show discrimination without showing of other cases that should have been prosecuted and were similar [83] and consistently failed to be prosecuted, and I think

that would have to be in Maui County. And we have some claim of bad faith, which is met because we have shown what the proof is and what occurred. So that I think that red herring should be disregarded as well.

Judge Biggs: Miss Lewis, how much time do you need to conclude?

Miss Lewis: Well, I think that I have only one more thing to say, and that is, as to the Grand Jury. If the Court please, I think the case that Judge Hall decided in 70 Federal Supplement, concerning a challenge to a Federal jury is very much in point. These Plaintiffs come in and talk about race classifications and then bring out themselves that they have crossed over those racial classifications whenever a person had a good job. So that when we get all through with it, they have shown themselves that in this Territory it isn't so much a matter of race as what a man can do. But they talk about economic status, and that is really what they are talking about and not racial discrimination. I think the record shows that very clearly. And then they set up a number of classifications which are hand-tailored because of this particular case. Now, how can the Jury Commissioners know when they start to set up a jury what the cases are? They have bunched into one group 33 people, all people who own any business, all people who are managers of any business except [84] farm managers—you see, the exception is because this is a case of agricultural labor—all officials, even the

County officials who are purely of an independent category, just working for the Government, all bunched into one group in order to draw a point that there were no farm laborers. There were laborers; they were daily wage earners on the jury. And they admitted that they wanted to draw a point about farm laborers. Well, suppose it was a banker who was on trial? Of course, he won't stand for the type of grouping of the thing we have done. It presents itself as the type of thing which would make the work of any Jury Commissioners impossible to accomplish. When you get all through with the whole matter you come out with a simple fact that is pointed out in the Fay case, that insofar as economic status may be material, it might be, because their claim is that they did all this in a labor dispute. And so a court that would be thoroughly impartial might like to know who on the grand jury list was strictly in the managerial class in the sense of top man in the company who handles such matters, and who were in the union class. But when we came in and showed that there were six members of the I.L.W.U. in that Grand Jury list, they started right away to pull that apart and show that three of them were clerical. And, if the Court please, one of those is even an official of that local, or was an official of that local. I don't know the present status. [85]

So that we have a very picayunish attitude in the making of these classifications which have been hand-tailored to try to show something to the Court

for which no Jury Commissioner would ever constitute a jury if it were to try to visualize all the cases that were going to come up and all the arguments that could be made.

Judge Biggs: Will you (to the Clerk) pass down to Mrs. Bouslog and Mr. Griffith this, please. This is merely Section 5 of 50 Stat. which we discussed before in respect to Section 266. I couldn't understand your argument, Mrs. Bouslog. I want you to give it to me again briefly on that. Remain seated, please. Just discuss this.

Mrs. Bouslog: I wish I had before me, your Honor, the whole part of the statute. My feeling was that this definition attempted to say that they wanted every court whose jurisdiction Congress conferred, defined or limited by Congress included, so that they could not interfere with the enforcement of Federal statutes.

Judge Biggs: Yes. You stated that you thought the phrase "Court of Record"—you see the second line?

Mrs. Bouslog: Yes, your Honor. I think that refers only to the Circuit and Supreme Court, and that this Court of Hawaii and that this Court is included in the term "District Court" because of the definition.

Judge Biggs: All right. Now, that concludes the [86] arguments. There is one further matter. We want Counsel to include in their briefs all reported decisions in the Territorial Courts or in this Court respecting picketing or contempt proceedings aris-

ing under alleged violations or actual violations of picketing. They need not be commented on. They may simply be included in a table attached to the briefs, or one of them, and Counsel may collaborate to make sure that they have them all. And if it is in one brief, it is enough.

Mr. Symonds: There is the question of the cost of the preparation of the record. I spoke to Judge Metzger about it several days ago. I wonder if we could take it up at this time?

Judge Biggs: What is that? I am not familiar with that.

Judge Metzger: I haven't been able to get the concurrence of the Administrator as to anything concerning that yet.

Judge Biggs: You mean the Administrative Office, Mr. Chandler?

Judge Metzger: Yes.

Judge Biggs: Well, just so that Judge Harris and I may be briefly informed on it, what is it?

Mr. Symonds: Well, your Honor, I was concerned with the question and I spoke to Miss Lewis about it, as to who was going to pay for the original transcript, original record. We realize that we will have to pay for our own copy. [87]

Judge Biggs: Yes.

Mr. Symonds: But, of course, the copies are much cheaper than the original record, and we are concerned about whether or not——

Judge Biggs: Well, I am afraid we cannot inform you with respect to that until we have some

further dealings with the Administrative Office respecting it.

Judge Metzger: As I understood the offer that you made, I suppose in concurrence with Miss Lewis of the Attorney General's Office, that we would each pay for one-third of the cost of three copies for the Court and one copy to each of you.

Mr. Symonds: That was the proposal I suggested to you.

Judge Metzger: All right. I submitted that to the Director of the Administrative Office of the Courts with my recommendation that he approve that. And as yet, I haven't had any reply. I expect it by Monday.

Mr. Symonds: All right.

Judge Biggs: That brings us to the matter of Civil No. 833 and No. 834, Reinecke versus Loper and others. The Court has prepared two orders and an opinion. Summing up briefly, the reasons for our conclusions are set forth at some length in a Per curiam opinion which will be filed with the orders. We deny those portions of the motion requesting the striking of part of the complaint. We deny any of those portions of [88] the motion praying for summary judgment in favor of the Defendants. We grant those portions of the motion praying that the action be dismissed, and we dismiss the actions. The basis of our decision being in substance that the administrative remedy has not been exhausted. We offer these to the Clerk for filing. Copies may be made available to Counsel

and whoever else desires them. The Court will stand adjourned.

(The Court adjourned at 1:07 o'clock, p.m.)

I, Albert Grain, Official Court Reporter, U. S. District Court, Honolulu, T. H., do hereby certify as follows: that the foregoing is a true and correct transcript of proceedings in Civil Case Nos. 828, 836, 833 and 834, held in the above-named court on May 1, 1948, before Judges Biggs, Harris and Metzger.

May 10, 1948.

/s/ ALBERT GRAIN.

STIPULATION

It Is Hereby Stipulated by and between Walter D. Ackerman, Jr., Attorney General of Hawaii, as an appellant in Civil Nos. 828 and 836 and as attorney for the appellant Jean Lane in Civil No. 828, and Bouslog and Symonds, attorneys for the appellees, that the annexed pages, except for the omission of illustrative diagramming, are copies of the charts used by plaintiff-appellees in their argument of May 1, 1948, and which the Court directed be written up as part of the transcript of the proceedings of said day (Tr. May 1, 1948, p. 51) and it is further stipulated that the Clerk of the

Court shall insert this stipulation in the transcript of the proceedings of May 1, 1948, as an appendix thereto.

Dated at Honolulu, T. H., July 21, 1949.

WALTER D. ACKERMAN, JR.,
Attorney General of Hawaii.
By /s/ RHODA V. LEWIS,
Assistant Attorney General.
BOUSLOG AND SYMONDS,
By /s/ HARRIET BOUSLOG.

CHART I

Percentage Comparison, Race of Population of Maui County (1) and of Grand Jury List, 1947, Maui County.

Japanese	
24,183	43.2%
7	14.0%
Filipino	
10,509	18.8%
0	0
Part-Hawaiian	
7,915	14.1%
12	24.0%
Caucasian	
6,989	12.5%
27	54.0%
Hawaiian	
2,946	5.3%
0	0

Other Races
(Koreans, Puerto Ricans)
1,925 ..... 3.4%
0 0

Chinese
1,513 ..... 2.7%
4 ..... 8.0%

1. Census Classification of Race of Population of Maui County. 1940 Population—55,980. Department of Health, Bureau of Health (Vital) Statistics, T. H., Show Little Change in Racial Characteristics, 1940 to 1946. Population is Estimated, As of July 1, 1946—55,904.

CHART II

Percentage Comparison of "Nationality" of Population of Maui County, 1940, and of Persons on the 1947 Grand Jury Panel, Maui County (1). "Nationalities" roughly Ranked as to Socio-Economic Status.

Haole
±2043 .....± 3.6%
21 ..... 42.0%

Portuguese
±4946 .....± 8.8%
6 ..... 12.0%

Cauc.-Hawaiian
±4113 .....± 7.4%
10 ..... 20.0%

Other Part-Hawaiian		
±3802	..... ±	6.8%
2	.....	4.0%
Chinese		
1513	.....	2.7%
4	.....	8.0%
Japanese		
24,183	.....	43.2%
7	.....	14.0%
Korean		
± 770	..... ±	1.4%
0	.....	0
Hawaiian		
2946	.....	5.3%
0	.....	0
Puerto Rican		
±1078	..... ±	1.9%
0	.....	0
Filipino		
10,509	.....	18.8%
0	.....	0

1. Number of Haoles ("Other Caucasians"), Portuguese (including Spaniards), Caucasian-Hawaiians and Other Part-Hawaiians, Koreans and Puerto Ricans obtained by carrying forward the 1930 proportions of these categories.

CHART III

Percentage Comparison, Socio-Economic Classes, Gainfully Employed Persons of Maui County, 1940, and Grand Jury List Maui County, 1947(1).

Proprietors and Managers Important Firms and/or Large Branches

± 100 ..... 0.6%

12 ..... 24.0%

Other Prop., Mgrs., and Officials, and Foremen

± 856 .....± 4.9%

20 ..... 40.00

Professional and Semi-Prof. Workers

556 ..... 3.2%

4 ..... 8.0

Farm Foremen

± 443 .....± 2.5%

0 0

Farmers

± 444 .....± 2.5%

2 ..... 4.0

Clerical, Sales, Etc.

1122 ..... 6.4%

6 ..... 12.0%

Craftsmen and Operatives

±3196 ..... 18.1%

3 ..... 6.0%

Laborers, Non-Farmers

1747 ..... 9.9%

1 ..... 2.0%

Farm Laborers

8301 .....±47.1%

0 0

Service Workers

822 ..... 4.7%

0 0

Occupation Not Specified

60 ..... 0.3%

2 ..... 4.0%

1. Adapted from Table 3, with certain classes combined and/or divided; Grand Jury data corrected.

[Endorsed]: Filed July 23, 1949 U.S.C.A.

[Title of District Court and Causes.]

LIST OF EXHIBITS MARKED IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT FOR IDENTIFICATION ONLY, TO WHICH THE DEFENDANTS HAVE SPECIAL OBJECTIONS

Reference is made to transcript of the proceedings of May 1, 1948, page 5, incorporating in the record the list of exhibits which in the grand jury proceeding in the Circuit Court of the Second Judicial Circuit were only marked for identification, and were not received in evidence. Such exhibits are as follows:

Movants' Exhibit A for identification, list of officers of various companies.

2 for identification, occupational index by races.

10 for identification, a paper headed "Table 7," relating to number of qualified women for the grand jury panel in Maui County.

20 for identification, a tabulation of families by precincts and races.

21 for identification, same type of tabulation.

Dated at Honolulu, T. H., this 18th day of May, 1948.

Respectfully submitted,
/s/ RHODA V. LEWIS,
Assistant Attorney General,
Attorney for Defendants.

[Endorsed]: Filed May 18, 1948.

[Title of District Court and Causes.]

CERTIFICATE OF CLERK

United States of America,
District of Hawaii—ss.

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that the foregoing record on appeal in the above-entitled causes, consists of the following listed original pleadings and exhibits of record in said causes:

Civil No. 828

Complaint, Summons.
Affidavit of Harriet Bouslog in Support of Order to Show Cause and Temporary Restraining Order
Amendment to Complaint for Injunction
Stipulation (filed December 4, 1947)
Motion to Dissolve Temporary Restraining Order and Notice of Motion
Return to Order to Show Cause
Memorandum of Authorities on Motion to Dissolve

Temporary Restraining Order and on Return to Order to Show Cause

Exhibits on Motion to Dissolve Temporary Restraining Order and on Return to Order to Show Cause

Stipulation (filed December 22, 1947)

Order on Motion to Dissolve Temporary Restraining Order and Amended Temporary Restraining Order

Stipulation and Order Joining Additional Plaintiffs

Affidavit of Harriet Bouslog

Stipulation (filed January 10, 1948)

Motion for More Definite Statement, Motion to Dismiss Action and for Summary Judgment and Defendants' Exhibits I, J and K

Memorandum of Authorities on Motions and Appendix

Defendants' Exhibit L Supplementing Motions filed January 14, 1948

Bill of Particulars

Order (Filed April 20, 1948)

Stipulation (Filed April 23, 1948)

Answer

Motion Suggesting the Abatement of the Action as to the Defendants E. R. Bevins, Individually and as County Attorney for the County of Maui, and Wendell F. Crockett, Individually and as Deputy to the County Attorney for the County of Maui, and for the Dismissal of the Action as to Them and Affidavit and Memorandum

Order (Filed February 23, 1949)
Return to Rule to Show Cause Issued February 23, 1949
Affidavit of Service of Return to Rule to Show Cause Issued February 23, 1949
Return to Order to Show Cause (Bevins)
Return to Order to Show Cause (Crockett)
Affidavit of Service of Return to Order to Show Cause
Order Discharging Rule to Show Cause
Decree
Notice of Appeal (Ackerman and Lane)
Notice of Appeal (Bevins and Crockett)
Bond on Appeal
Order Extending Time to File and Docket Record with the United States Court of Appeals for the Ninth Circuit
Waiver of Bond on Appeals to Appellants Wendell F. Crockett and E. R. Bevins
Order to Show Cause and Temporary Restraining Order

Civil No. 836

Complaint, Summons
Return to Order to Show Cause
Memorandum of Authorities on Return to Order to Show Cause
Temporary Restraining Order and Order Granting Request for Three-Judge Court
Motion for More Definite Statement, Motion to Dismiss Action and for Summary Judgment, Notice of Motions and Exhibits M, N, and O

Memorandum of Authorities on Motions
Order (Filed April 19, 1948)
Stipulation
Answer
Motion Suggesting the Abatement of the Action as to the Defendants E. R. Bevins, Individually and as County Attorney for the County of Maui, and Wendell F. Crockett, Individually and as Deputy to the County Attorney for the County of Maui, and for the Dismissal of the Action as to Them and Affidavit and Memorandum
Order (Filed February 23, 1949)
Return to Rule to Show Cause Issued February 23, 1949
Affidavit of Service of Return to Rule to Show Cause Issued February 23, 1949
Return to Order to Show Cause (Bevins)
Return to Order to Show Cause (Crockett)
Affidavit of Service of Return to Order to Show Cause
Order Discharging Rule to Show Cause
Decree
Notice of Appeal (Ackerman)
Notice of Appeal (Bevins and Crockett)
Bond on Appeal
Order Extending Time to File and Docket Record with the United States Court of Appeals for the Ninth Circuit
Waiver of Bond on Appeal as to Appellants Wendell F. Crockett and E. R. Bevins
Order to Show Cause

Civil Nos. 828 and 836

Order of Consolidation

List of Exhibits Marked in the Circuit Court of the Second Judicial Circuit for Identification Only, to Which the Defendants Have Special Objections

Opinion

Suggestion for Incorporation in the Record on Appeal of Certain Matters of Record in this Court

Stipulation and Order for Consolidation of Record

Order (Filed June 27, 1949)

Designation of Record on Appeal

Designation of Record on Appeal (Bevins and Crockett)

Stipulation (Filed July 19, 1949)

Plaintiffs' Exhibits Nos. 1 to 13, inclusive, and 17 to 33, inclusive.

Defendants' Exhibits "A-1" to "R," inclusive

Court's Exhibits 1 and 2

I further certify that included in said record on appeal are the originals and copies of the transcripts of proceedings of December 10, 1947, April 15, 16, 19, 20, beginning April 23, and May 1, 1948 as filed in these causes; and also copies of the minutes of this Court of December 1, 10, and 20, 1947, January 6, April 15, 16, 17, 19, 20, 23, 24, 26, 27, and May 1, 1948.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 21st day of July, A.D. 1949.

[Seal] /s/ WM. F. THOMPSON, JR.,
Clerk, United States District Court, District of Hawaii.

[Endorsed]: No. 12300. United States Court of Appeals for the Ninth Circuit. Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii and Jean Lane, individually as Chief of Police of the County of Maui, Appellants, v. International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated asociation and labor union, et al., Appellees, and E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, Appellants, vs. International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union, et al., Appellees. Transcript of Record. Appeals from the United States District Court for the Territory of Hawaii.

Filed July 23, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 12300 - 12301
Civil No. 828

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, JEAN LANE, individually and as Chief of Police of the County of Maui, E. R. BEVINS and WENDELL F. CROCKETT,

Defendant-Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary, unincorporated association and labor union, et al,

Plaintiff-Appellees.

Civil No. 836

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, E. R. BEVINS and WENDELL F. CROCKETT,

Defendant-Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary, unincorporated association and labor union, et al,

Plaintiff-Appellees.

APPELLANTS' DESIGNATION OF RECORD TO BE PRINTED

Pursuant to Rule 19 of this Court appellants hereby designate for printing the following portions of the record on appeal. (References in the left-hand column are to item numbers as set forth in the designation of the record on appeal.)

Civil No. 828

1. Complaint filed December 1, 1947, and Exhibits D and E (memorandum of points and authorities to be omitted; Exhibits A, B and C to be omitted as being merely copies of law).

2. Affidavit of Harriet Bouslog in support of order to show cause and temporary restraining order, filed December 1, 1947.

3. Summons issued December 1, 1947.

4. Order to show cause and temporary restraining order issued December 1, 1947 at 7:00 p.m.

Marshal's return of service of summons, order to show cause, and temporary restraining order, to be so printed as to show the dates of service on the respective parties.

6. Amendment to complaint for injunction filed December 4, 1947.

8. Motion to dissolve temporary restraining order and notice of motion served and filed December 8, 1947.

9. Return to order to show cause served and filed December 8, 1947.

11. Exhibits A to E inclusive on motion to dissolve temporary restraining order and on return to

order to show cause served and filed by defendants December 8, 1947, and Exhibits G and H filed in open court December 10, 1947. Exhibit F not to be printed, being reported in Volume 37, Hawaii Reports, page 625.

13. Order on motion to dissolve temporary restraining order and amended temporary restraining order dated December 10, 1947 at 5:30 p.m., filed December 23, 1947.

14. Stipulation and order joining additional plaintiffs filed December 31, 1947. Exhibit F not to be printed, being the same as the criminal complaint appearing in defendants' Exhibit K, part of item 17. Exhibit G not to be printed, being the same as the decision appearing in defendants' Exhibit K, part of item 17.

15. Affidavit of Harriet Bouslog with reference to additional plaintiffs, filed January 7, 1948.

17. Motion for more definite statement, motion to dismiss action and for summary judgment, and notice of motion, filed January 14, 1948, together with Defendants' Exhibits I, J and K, consisting of:

Exhibit I, affidavit of Andrew S. Freitas, Assistant Chief of Police, re Kalua incident, July 15, 1947.

Exhibit J, affidavit of Andrew S. Freitas, Assistant Chief of Police, re incident at Kaumalapau Wharf, July 14, 1947.

Exhibit K, criminal complaint against and commitment of Agliam and thirty-five others to await

action of the grand jury, to be printed in toto, including the transcripts of proceedings.

19. Defendants' Exhibit L, filed January 17, 1948, supplementing motions filed January 14, 1948.

20. Plaintiffs' bill of particulars filed January 28, 1948, together with transcripts of proceedings in Criminal Nos. 2412 and 2413, Circuit Court, Second Judicial Circuit, Territory of Hawaii, before Honorable Albert M. Cristy, Substitute Judge, held at Wailuku, Maui, September 15, 16, 17 and 18, 1947. (Movants' Exhibits 5, 6, 7, 8, 9 and 12 are not to be printed, being part of Plaintiffs' Exhibit 25 in the United States District Court.)

22. Order re defendants' motions dated April 19, 1948 and filed April 20, 1948.

23. Stipulation dated April 22, 1948 and filed April 23, 1948.

24. Answer dated April 22, 1948 and filed April 23, 1948.

25. Order consolidating, for hearing and trial, Civil Nos. 828 and 836, filed April 23, 1948.

26. Opinion of the court filed December 27, 1948.

27. Order amending opinion of December 27, 1948, filed January 18, 1949.

28. Motion suggesting the abatement of the action as to the defendants E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy County Attorney for the County of Maui, and for the dismissal of the action as to them, and affidavit filed by Walter D. Ackerman, Jr., Attorney

General of Hawaii, January 20, 1949. (Memorandum not to be printed.)

29. Order (rule to show cause) of February 23, 1949.

30. Return to rule to show cause filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, Jean Lane, Chief of Police of the County of Maui, Harold L. Duponte, County Attorney for the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui, March 10, 1949.

32. Return of E. R. Bevins to order to show cause, dated March 8, 1949 and filed in propria persona March 11, 1949.

33. Return of Wendell F. Crockett to order to show cause, dated March 11, 1949 and filed in propria persona March 12, 1949.

35. Order discharging rule to show cause, filed March 24, 1949.

36. Decree filed March 29, 1949.

37. Notice of appeal filed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui, April 26, 1949.

38. Notice of appeal filed by E. R. Bevins and Wendell F. Crockett, April 26, 1949.

40. Bond on appeal executed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui as principles, and United States Fidelity and

Guaranty Company of Baltimore, Maryland, as surety, filed April 28, 1949.

41. Order extending time to file and docket record with the United States Court of Appeals for the Ninth Circuit, Filed May 26, 1949.

42. Suggestion for incorporation in the record on appeal of certain matters of record in this court, together with affidavit and letter filed June 23, 1949, and such order as the court may make relative thereto.

43. Stipulation and order for the consolidation of Civil Nos. 828 and 836 for filing of the records on appeal and docketing of the appeals, filed June 27, 1949.

45. Waiver of bond on appeal as to appellants Wendell F. Crockett and E. R. Bevins.

46-A. Statement of points on appeal pursuant to Rule 19, subdivision 6, Rules of the United States Court of Appeals for the Ninth Circuit, together with statement filed by the appellants Wendell F. Crockett and E. R. Bevins.

46. This designation of the record on appeal, together with designation filed by the appellants Wendell F. Crockett and E. R. Bevins.

Civil No. 836

47. Complaint and Exhibit E (memorandum of points and authorities not to be printed; Exhibits A to D inclusive not to be printed, being merely copies of laws).

48. Summons issued December 31, 1947.

49. Order to show cause issued December 31, 1947.

50. Return of service made January 5, 1948.

51. Return to order to show cause and affidavit, filed January 6, 1948.

53. Temporary restraining order and order granting request for three-judge court, dated and filed January 9, 1948.

56. Motion for more definite statement, motion to dismiss action and for summary judgment, and notice of motion, filed January 20, 1948, together with Exhibits M and N (Exhibit O not to be printed, being pages 149-162 of the transcript of the grand jury hearing in the Second Circuit, and the entire transcript being designated for printing as part of item 20).

58. (Bill of particulars filed January 28, 1948 in Civil No. 828 and by the court's ruling of April 16, 1948 entered as well in Civil No. 836, should not be printed again but the printed record should show that this bill of particulars is the same as that printed for Civil No. 828, item 20, supra.)

60. Order re defendants' motions, dated and filed April 19, 1948.

61. Stipulation dated April 22, 1948, filed April 23, 1948.

62. Answer dated April 22, 1948 and filed April 23, 1948.

63. (Order consolidating for hearing and trial Civil Nos. 828 and 836, filed April 23, 1948, should not be printed again but the printed record should

show that this order is the same as that printed for Civil No. 828, item 25, supra.)

64. (Opinion of the court filed December 27, 1948, should not be printed again, but the printed record should show that this opinion is the same as that printed in Civil No. 828, item 26, supra.)

65. (Order amending opinion of December 27, 1948, filed January 18, 1949, should not be printed again but the printed record should show that this order is the same as that printed for Civil No. 828, item 27, supra.)

66. (Motion suggesting the abatement of the action as to the defendants E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, and for the dismissal of the action as to them, and affidavit, filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, January 20, 1949, in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it was in the same form as that filed for Civil No. 828. This will have been printed, being item 28, supra.)

67. (Order (rule to show cause) of February 23, 1949, issued in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it was in the same form as that issued in Civil No. 828, except that Jean Lane, Chief of Police of the County of Maui, was not

ordered to show cause. This will have been printed, being item 29, supra.)

68. (Return to rule to show cause filed by Walter D. Ackerman, Jr., Attorney General of Hawaii, Harold L. Duponte, County Attorney for the County of Maui, and Thomas Ogata, Deputy County Attorney of the County of Maui, March 10, 1949, in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it is in the same form as that filed for Civil No. 828, except for the omission of Jean Lane and changes in wording so as to make proper references to the respective causes. The return in Civil No. 828 will have been printed, being item 30, supra.)

70. (Return of E. R. Bevins to order to show cause, dated March 8, 1949 and filed in propria persona March 11, 1949 in Civil No. 836 as well as Civil No. 828, should not be printed but the printed record should show that it is in the same form as that filed for Civil No. 828. This will have been printed, being item 32, supra.)

71. (Return of Wendell F. Crockett to order to show cause, dated March 11, 1949 and filed in propria persona March 12, 1949 in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it is in the same form as that filed for Civil No. 828. This will have been printed, being item 33, supra.)

73. (Order discharging rule to show cause, filed March 24, 1949, made in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed

record should show that it is in the same form as that made in Civil No. 828. This will have been printed, being item 35, supra.)

74. Decree filed March 29, 1949.

75. Notice of appeal filed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, April 26, 1949.

76. Notice of appeal filed by E. R. Bevins and Wendell F. Crockett, April 26, 1949.

78. (Bond on appeal executed by Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, as principal, and United States Fidelity and Guaranty Company of Baltimore, Maryland, as surety, filed April 28, 1949 in Civil No. 836 as well as Civil No. 828, should not be printed but the printed record should show that it is in the same form as that filed for Civil No. 828, except for the omission of Jean Lane. The bond in Civil No. 828 will have been printed, being item 40, supra.)

79. Order extending time to file and docket record with the United States Court of Appeals for the Ninth Circuit, Filed May 26, 1949.

80. (Suggestion for incorporation in the record on appeal of certain matters of record in this court, together with affidavit and letter, filed June 23, 1949, and such order as the court may make relative thereto, should not be printed again but the record should show that it is the same as that printed for Civil No. 828, being item 42, supra.)

81. (Stipulation and order for the consolida-

tion of Civil Nos. 828 and 836 for filing of the records on appeal and docketing of the appeals, filed June 27, 1949, should not be printed again but the record should show that it is the same as that printed for Civil No. 828, being item 42, supra.)

83. (Waiver of bond on appeal as to appellants Wendell F. Crockett and E. R. Bevins, filed in Civil No. 836 as well as Civil No. 828, should not be printed, but the printed record should show that it is in the same form as that filed for Civil No. 828. This will have been printed, being item 45, supra.)

84. (Designations of record on appeal should not be printed again, but the printed record should show that they are the same as those printed for Civil No. 828, being item 46, supra.)

84-A. (Statements of points on appeal pursuant to Rule 19, subdivision 6, Rules of the United States Court of Appeals for the Ninth Circuit, should not be printed again but the printed record should show that they are the same as those printed for Civil No. 828, being item 46-A, supra.)

Transcripts of Testimony and Proceedings

85. (Record of the proceedings before Young Wa, Acting District Magistrate of the District Court of Lanai, on the preliminary hearing had by the plaintiffs Agliam et al, should not be printed again but the printed record should show that this is the same as Exhibit K, filed with defendants' motions of January 14, 1948, part of item 17, supra.)

86. (Transcript of proceedings in Criminal Nos. 2412 and 2413 in the Circuit Court, Second Circuit, Territory of Hawaii, before Honorable Albert M. Cristy, Substitute Judge, Wailuku, Maui, September 15, 16, 17 and 18, 1947, should not be printed again but the printed record should show that this is the same transcript filed with plaintiffs' bill of particulars January 28, 1948, part of item 20, supra.)

87. Transcript of the proceedings in Civil No. 828 on December 10, 1947, filed June 21, 1948.

88. Transcript of the proceedings of April 15, 1948 in Civil Nos. 828 and 836 prior to argument, filed June 30, 1948, together with such further transcript of the proceedings of April 15, 1948 as plaintiff-appellees may file.

89. Transcript of a portion of the argument of April 16, 1948 in Civil Nos. 828 and 836, filed January 25, 1949, together with such further transcript of the proceedings of April 16, 1948 as plaintiff-appellees may file.

90. Such transcript of the proceedings of April 17, 1948 as plaintiff-appellees may file.

91. Transcript of the proceedings of April 19, 1948 in Civil Nos. 828 and 836, filed June 28, 1949.

92. Transcript of a portion of the proceedings of April 20, 1948 in Civil Nos. 828 and 836, together with such further transcript of the proceedings of April 20, 1948 as plaintiff-appellees may file.

93. Transcript of the proceedings of April 23,

1948 to April 27, 1948 inclusive, in Civil Nos. 828 and 836, filed June 9, 1948.

94. Transcript of the proceedings of May 1, 1948 in Civil Nos. 828 and 836, together with "List of Exhibits Marked in the Circuit Court of the Second Judicial Circuit for Identification Only, to Which the Defendants Have Special Objections", filed May 18, 1948 by permission of the court in open court May 1, 1948.

Exhibits

The following are in addition to the exhibits heretofore listed as having been annexed to or filed with various pleadings, motions and other papers, some of which were admitted in evidence as and to the extent shown by the stipulations filed April 23, 1948 in Civil Nos. 828 and 836.

95. The following exhibits or parts of exhibits, marked as Plaintiffs' Exhibits:

Exhibit 1, in two parts, being War Food Administration determination of fair and reasonable wage rates during the calendar year 1943, and War Food Administration determination of fair and reasonable wage rates during the calendar year 1944.

Exhibit 3, agreement between the International Longshoremen's and Warehousemen's Union and Hawaii's sugar industry, 1947-1948, to be printed in part, to wit, Sections 7, 18, 19, and 20 of the agreement.

Exhibit 5, in two parts, being criminal complaint

sworn by F. B. DeMello, November 13, 1946, against Mac Masato Yamauchi and others as to an incident of November 6, 1946, concerning one Harlow Wright; and criminal complaint sworn by F. B. DeMello, November 13, 1946, against Mac Masato Yamauchi and others as to an incident of November 6, 1946, concerning James Backlund and Michael Hopland Nelson.

Exhibit 6, in two parts, being an indictment in Territory v. Mac Masato Yamauchi et al, Criminal 2379, Circuit Court, Second Circuit, Territory of Hawaii; and an indictment in Territory v. Mac Masato Yamauchi et al, Criminal No. 2380, Circuit Court, Second Circuit, Territory of Hawaii.

Exhibit 7, in two parts, being judgment and sentence of Circuit Court, Second Judicial Circuit, Territory of Hawaii, in Criminal No. 2379; and judgment and sentence of Circuit Court, Second Judicial Circuit, Territory of Hawaii, in Criminal No. 2380.

Exhibit 8, letter of Maui Chamber of Commerce, dated April 29, 1948, and enclosed resolution adopted by Board of Directors, Chamber of Commerce of Honolulu, June 5, 1947.

Exhibit 9, indictment in Territory v. Joseph Kaholokula et al, returned by the grand jury, Second Judicial Circuit, October 30, 1946, marked No. 2365.

Exhibit 10, plantation house rules, Hawaiian Commercial and Sugar Company, Limited.

Exhibit 11, (mimeographed copies of laws) not

to be printed, but the printed record should describe the exhibit, as set forth in the appellants' designation of record on appeal.

Exhibit 12, mimeographed sheet headed "Causes for Discipline or Discharge." Appended safety rules not to be printed.

Exhibit 13, oral decision of the Honorable Cable A. Wirtz in Criminal No. 2242 in the Circuit Court, Second Circuit, Territory of Hawaii, entitled Territory v. Basiliso Arruiza, rendered December 23, 1947.

Exhibit 17, excerpt from book by Romanzo Adams "Interracial Marriage in Hawaii; a Study of the Mutually Conditioned Processes of Acculturation and Amalgamation", published by the Macmillan Company, 1937.

Exhibit 18, to be printed in part as follows:

Maui Agricultural Company Annual Report for 1947, the following parts to be printed without illustrations or pictures: pages 2, 3, 19, 24, 25, 26.

Typewritten sheet headed "Baldwin Packing Company, Ltd.—1946", to be printed.

Pioneer Mill Company Annual Report for 1947, the following parts to be printed: pages three, four, and five (graph to be omitted), and the Supervisory Staff on the inside of the back cover.

Table entitled "Occupational Index by Races, Territory of Hawaii, 1940", to be printed.

Exhibit 20, in two parts, being a table headed "Table Showing Percentage of 'Other Caucasians' in Population in Maui County and on Grand Jury

Panel for Years 1942 to 1947"; and table headed "Table Showing Proportion of 'Other Caucasians' in Total Population of Maui County 1920-1940".

Exhibit 21, table headed "Table of Racial and/or National Extraction and Occupation of Persons on Maui Grand Jury List 1947".

Exhibit 22, certificate of County Clerk, County of Maui, dated April 22, 1948, headed "Number of Filipino voters registered for the election years covering 1934-1946".

Exhibit 23, questionnaires in the Circuit Court, Second Circuit, of Charles Edward Thompson, Edmund Nunes, Kenneth W. Auld, Eugene Kealoha Ayers, Edward Henry Kittredge Baldwin, Richard H. Baldwin, Edwin S. Bowmer, Alfred Sawyer Burns, William Preston Burns, Ralph O. Cornwell, Manuel Correia, Jr., Allan Hart Ezell, Stanley Cornwell Friel, Walter William Holt, Charles E. Morris, Edwin Kiyoshi Muroki, Toshio Onuma, John Plunkett, Paul Raymond Rinehart, Albert G. Simpson and Anthony Apo Tam.

Exhibit 24, questionnaires in the Circuit Court, Second Circuit, of Vincente Compania Saloricman, Narcisso Sipe, Vincente Engoring, Salvador Seno, Gilbert Eufronio Gonzado, Francis Damion Segundo, Frederick Bibilone Saranillio, Douglas Marcelino Gaboya, John Cornelio, Ted Simplicio Herolaga, George Ramaila, and Earl Larato Herolaga. The marking of "not qualified", "questionable", or "qualified", appearing in the left hand corner, should be included in the printing.

Exhibit 25, to be printed in part, being the following as marked in the Second Judicial Circuit, Territory of Hawaii:

Movants' Exhibit A for identification, list of officers of various companies.

Movants' Exhibit 5, Table I, entitled "Caucasians and non-Caucasians in the Population and Grand Jury Panel of Maui County".

Movants' Exhibit 6, Table II, entitled "Caucasians (including part-Hawaiians) and non-Caucasians in the Population and the Grand Jury Panel of Maui".

Movants' Exhibit 7, Table 3, entitled "Distribution of Employed Workers by Major Occupation Group in the Population and in the Panel".

Movants' Exhibit 8, Table 4, entitled "Class of Worker of Employed Persons (Except on Public Emergency Work) Maui County".

Movants' Exhibit 9, Table 5, entitled "Class of Worker of Employed Persons Maui County".

Movants' Exhibit 13, list of names headed "1946 Register of Male Voters of County of Maui, 3rd Representative District, 2nd Precinct—Honolua (Non-ILWU Members)".

Movants' Exhibit 14, list of names headed "1946 Register of Male Voters of County of Maui, 3rd Representative District, 2nd Precinct—Honolua (ILWU Members)".

Movants' Exhibit 15, typewritten sheet headed "Length of Service of Members of Grand Jury Panel, 1942-1947, Maui County".

Movants' Exhibit 17, table headed "List of Registered Voters for the General Election, November 5th, 1946, Third Representative District by Nationalities". Only the first sheet to be printed, covering male voters.

Exhibit 26, lists of names entitled "Haoles on Grand Jury Panels".

Exhibit 27, tables of Hawaiian Sugar Planters Association census, only page 3 to be printed, being Summary for Maui.

Exhibit 28, list of names headed "Maui Police Commission as Constituted during the Calendar Years of 1946 and 1947".

Exhibit 31, statement received from Mac Masato Yamauchi by Assistant Chief Freitas, Wailuku Police Station, Thursday, November 7, 1946.

Exhibit 32, certificate of the Treasurer of the Territory of Hawaii, concerning the amended by-laws of the Oriental Benevolent Association, the office held by Philip P. Gamponia therein, and the dissolution of said association.

96. The following exhibits, or parts of exhibits, marked as Defendants' Exhibits:

Exhibit N, statement received from Abraham Makekau by Captain J. D. Seabury, Lanai Police Station, Tuesday, July 15, 1947.

Exhibit P, biography of William Little Lee, first Chief Justice of the Hawaiian Supreme Court.

Exhibit Q, portions of Senate Document No. 16, 55th Cong. 3d Sess., the part to be printed being the letters of transmission on the second page of the

exhibit, the preface to the copy of the Civil and Penal Laws transmitted with the report, and Chapters 28 and 38 of the Penal Laws so transmitted.

Exhibit R, portions of House of Representatives Report No. 305, 56th cong., 1st Sess., the part to be printed being the opening paragraph of the report and the section of the report headed "The Judiciary of the Territory of Hawaii and of the New Territory after its Organization", beginning on the second page of the exhibit and including all but the last four lines on the last page of the exhibit.

97. The following exhibits, or parts of exhibits, marked as Court's Exhibits:

Exhibit 1, to be printed in part as follows: Report of the jury commissioners and lists of names of persons selected to serve as jurors in and for the Second Circuit, Territory of Hawaii, for the year 1947, being the same as Court's Exhibit 1 in the Circuit Court, Second Circuit, Territory of Hawaii; and Clerk's minutes of the drawing of grand jurors, Friday, December 27, 1946, being the same as Court's Exhibit 2 in the Second Judicial Circuit, Territory of Hawaii.

Exhibit 2, in four parts: Charge to the grand jury filed March 25, 1947 in the Circuit Court, Second Circuit, Territory of Hawaii, being the same as Prosecution's Exhibit D in the said Circuit Court, Second Circuit. Summary of questionnaires showing by precinct the number marked as "Qualified", "Questionable", "Exempted", "Not qualified", "Out of jurisdiction, moved", "Temporarily out of

jurisdiction, Army", "Deceased", "Questionnaire not received", and the total of each precinct, being the same as Prosecution's Exhibit C in the Circuit Court, Second Circuit, Territory of Hawaii. Table entitled "List of registered voters for the general election November 7, 1944, Third Representative District, by Nationalities", covering male voters, being the same as Prosecution's Exhibit A in the Circuit Court, Second Circuit, Territory of Hawaii. Table entitled "List of Votes cast for the general election November 7, 1944, Third Representative District, by Nationalities", covering male voters, being the same as Prosecution's Exhibit B in the Circuit Court, Second Circuit, Territory of Hawaii.

And the following are also designated for printing:

98. All of the Clerk's minutes in Civil Nos. 828 and 836.

99. The form or forms of questionnaire blank used for prospective jurors in the United States District Court for the District of Hawaii during the calendar years 1946, 1947, 1948 and 1949.

Dated at Honolulu, T. H., this 14th day of July, 1949.

/s/ RHODA V. LEWIS,

Assistant Attorney General, Attorney for Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, and Jean Lane, individually and as Chief of Police of the County of Maui, in Civil No. 828; Attorney for Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, in Civil No. 836.

[Endorsed]: Filed July 23, 1949.

[Title of Court of Appeals and Causes.]

APPELLANTS' DESIGNATION OF RECORD TO BE PRINTED

Come now E. R. Bevins and Wendell F. Crockett, defendant-appellants above named and for their designation of the record to be printed herein, hereby join in and adopt the Designation of Record to be Printed filed by the appellants Walter D. Ackerman, Jr., and Jean Lane.

Dated: July 15, 1949.

/s/ E. R. BEVINS,
In Propria Persona.

/s/ WENDELL F. CROCKETT,
In Propria Persona.

[Endorsed]: Filed July 23, 1949.

[Title of Court of Appeals and Causes.]

STATEMENT OF POINTS ON APPEAL PURSUANT TO RULE 19

1. The court erred in denying defendants' motion to dissolve the temporary restraining order in Civil No. 828, in issuing an amended temporary restraining order therein, and in issuing a temporary restraining order in Civil No. 836.

2. The court erred in denying defendants' motions in Civil Nos. 828 and 836 to dismiss the actions plaintiffs to make more definite statements (parts I and II of said motions).

3. The court erred in denying defendants' motions in Civil Nos. 828 and 836 to dismiss the actions for lack of jurisdiction over the subject matter (part III of said motions).

4. The court erred in holding that it had jurisdiction over these causes by virtue of the Civil Rights Acts and section 1343 of Revised Title 28, United States Code (Opinion, page 4, footnote 1; pages 49-50).

5. The court erred in holding that the allegations and proof of jurisdictional amount by the several parties plaintiff were immaterial (Opinion, page 9, footnote 5).

6. The court erred in finding that the ILWU sustained losses in excess of $3,000 (Opinion, page 9, footnote 5).

7. The court erred in holding it had jurisdiction of these causes by virtue of section 1337 of Revised

Title 28, United States Code (Opinion, page 4, footnote 1; pages 50-51).

8. The court erred in holding and decreeing that it had the authority to sit as a three-judge court under section 2281, Revised Title 28, United States Code (Opinion, page 34).

9. The court erred in holding and decreeing that if it was not a properly constituted three-judge court sitting under section 2281, Revised Title 28, United States Code, it was sitting as a court en banc (Opinion, page 46), when said court did not consist of all of the judges for the district in active service, and the Honorable J. Frank McLaughlin was neither disqualified nor absent.

10. The court erred in denying defendants' motions in Civil Nos. 828 and 836 to dismiss so much of the complaints as purported to allege, in favor of the individual plaintiffs named as defendants in criminal proceedings pending in the Circuit Court of the Territory of Hawaii, claims for relief against the enforcement of the statutes complained of, and the court further erred in denying defendants' motions for summary judgments against said plaintiffs (parts IV and V of the motion in Civil No. 828 and part IV of the motion in Civil No. 836).

11. The court erred in restraining the defendants from proceeding with the prosecution commenced July 16, 1947 against the plaintiffs Diego Barbosa and the others named in paragraph 11 of the decree in Civil No. 828, under any complaint or indictment based on the unlawful assembly and riot statute.

12. The court erred in restraining the defendants from proceeding with the prosecution commenced July 15, 1947 against the plaintiffs Abraham Makekau and the others named in paragraph 12 of the decree in Civil No. 828, under any complaint or indictment based on the unlawful assembly and riot statute.

13. The court erred in restraining the defendants from proceeding with the prosecution commenced August 1, 1947, against the plaintiffs Bartolome Agliam and the others named in paragraph 13 of the decree in Civil No. 828, under any complaint or indictment based on the unlawful assembly and riot statute.

14. The court erred in restraining the defendants from proceeding with the prosecution commenced in October 1946 against the plaintiffs Joseph Kaholokula and the others named in paragraph 11 of the decree in Civil No. 836 under any complaint or indictment based on the unlawful assembly and riot statute or the conspiracy statute.

15. The court erred (Opinion, pages 69-80) in failing to apply the rule that where criminal prosecutions are pending in a state or territorial court a federal district court is not authorized to use injunction proceedings as a means of quashing such criminal charges, said rule further requiring the defendants in the criminal cases to exhaust their remedies in the system of courts where the criminal proceedings lie and upon appeal therefrom.

16. The court erred in holding that upon an

application for an injunction against criminal prosecutions pending in the courts of the Territory, under the Civil Rights Act it constitutes a ground for intervention in said proceedings by the United States District Court if said court finds that the prosecutions are not in good faith (Opinion, page 78).

17. The court erred in holding that it constituted a ground for equitable intervention in the pending criminal cases that the court would be able to act before the criminal cases could reach the Court of Appeals for the Ninth Circuit via the territorial courts (Opinion, page 80).

18. The court erred in holding that the applicability in the Territory of Hawaii of the provisions of section 2283 of Revised Title 28 is interwoven with the applicability of section 2281 of Revised Title 28 (Opinion, page 69).

19. The court erred in holding that despite section 2283 of Revised Title 28, a federal court may exercise its equity jurisdiction to prevent the trial of a defendant by a state court in a pending criminal case (Opinion, page 71).

20. The court erred in not holding the complaints fatally defective in failing to show that the plaintiffs were being prosecuted for acts of free speech, peaceable assembly, or peaceful picketing.

21. The court erred in not holding that the complaint in Civil No. 828 was fatally defective, when it was wholly speculative whether the grand jury would indict the plaintiffs under the unlawful assembly and riot act.

22. The court erred (Opinion, page 69) in failing to apply the doctrine of abstention, under which a federal court will not rule upon a constitutional question which construction of the statute has avoided or may avoid.

23. The court erred in holding and decreeing that the unlawful assembly and riot law (chapter 277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) was unconstitutional.

24. The court erred (Opinion, page 75) in assuming the power to review and reverse the decision of the Supreme Court of Hawaii in Territory v. Kaholokula, 37 Haw. 625, and in enjoining as unconstitutional the application of the unlawful assembly and riot act in the cases of seventy-five plaintiffs, as to whom the constitutionality of said statute was res judicata until and unless an appellate court should reverse the holding of the Supreme Court of Hawaii.

25. The court erred (Opinion, pages 64, 75, 80) in holding that it had authority to reject as erroneous the interpretation put on the unlawful assembly and riot law by the Supreme Court of Hawaii.

26. The court erred (Opinion, pages 53-57) in construing the unlawful assembly and riot act (chapter 277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) as patterned after the dispersal of assemblies statute enacted in the reign of George I.

27. The court erred in ruling upon the meaning and effect of the dispersal provisions of the unlawful assembly and riot law (chapter 277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62, Session Laws of Hawaii 1949) when the same were in no way involved (Opinion, page 61).

28. With reference to the provisions of the unlawful assembly and riot law (chapter 277 of the Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62, Session Laws of Hawaii 1949) making acts which strike or tend to strike terror into others essential ingredients of the offense of riot, the court erred in holding that the law intended a subjective test (Opinion, pages 58-61), and erred in rejecting the common law test, which plaintiffs conceded to be the test of what would frighten a man of reasonably firm convictions (Transcript of Proceedings of April 16, 1948).

29. The court erred in holding that the unlawful assembly and riot act (chapter 277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) permits guilt to the implied by the mere presence on the scene of any person (Opinion, pages 60-61).

30. The court erred in speculating as to the possible use of the unlawful assembly and riot law as a field for the operation of the agent provocateur (Opinion, page 64).

31. The court erred in holding that if any part of the unlawful assembly and riot law (chapter

277, Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) was unconstitutional no part of it could be saved (Opinion, page 62).

32. The court erred in holding that the maximum imprisonment possible under the unlawful assembly and riot act (chapter 277 of the Revised Laws of Hawaii 1945, as it read prior to its amendment by Act 62 of the Session Laws of Hawaii 1949) had bearing upon the validity of the whole statute (Opinion, page 64), and further erred in considering the maximum imprisonment possible under the statute, when the plaintiffs had not invoked the Eighth Amendment and plaintiffs conceded no "cruel and unusual punishment" was involved (Transcript of Proceedings of April 16, 1948).

33. The court erred in taking judicial notice of the transcript of record in the appeal in the case of ILWU v. Wirtz, 170 F. 2d 183, a case going from the Supreme Court of Hawaii to the Court of Appeals for the Ninth Circuit (Opinion, page 21) after having excluded the same from evidence (Transcript, pages 133-135), and erred in giving weight thereto (Opinion, pages 21-22, 59).

34. The court erred in striking down as unconstitutional in its entirety the conspiracy law (chapter 243, Revised Laws of Hawaii 1945). (Opinion, pages 65-68).

35. The court erred in holding unconstitutional the portion of the conspiracy law (chapter 243, Revised Laws of Hawaii 1945) relating to the doing

of "what is obviously and directly wrongfully injurious to another" (Opinion, pages 67-68).

36. The court erred in holding that the ILWU and the class representatives were proper parties plaintiff, and in denying defendants' motions to dismiss them from the actions (part VI of the motion in Civil No. 828; part V of the motion in Civil No. 836).

37. The court erred in holding that a cause of action under the Labor Management Relations Act, 1947, was involved, in concluding that the unlawful assembly and riot act and the conspiracy law weight the scales in favor of the employer and against the employee and "cause great and irreparable harm and damage to all labor relations in Hawaii," and in concluding that if "comparatively heavy sentences" were imposed on "any substantial number" of the plaintiffs, "many years would pass before an adequate basis for collective bargaining could arise again" (Opinion, pages 50-51, 76-77), and further erred in considering said Labor Management Relations Act, 1947, when plaintiffs made no allegations thereunder.

38. The court erred in taking judicial notice of and making findings and conclusions concerning, the following subject matter, to wit, land ownership in the Territory of Hawaii, the circumstances which led the 1929 legislature to amend the unlawful assembly and riot statute, the history and status of labor relations in the Territory, the attitude of the community toward the labor movement, and the

mores of the community (Opinion, pages 12-17, 79); and further erred in considering such subject matter when no facts relating thereto were pleaded.

39. The court erred in comparing the 1943 minimum cash wage of a sugar plantation laborer of $1.84 a day exclusive of bonus and perquisites (housing, medical attention, hospitalization, fuel and water), with the existing "approximate daily rate" in excess of $8.00 a day inclusive of everything (Opinion, page 11).

40. The court erred in overruling defendants' objection to the admission of testimony as to whether any employer in the sugar or pineapple industry ever agreed to submit to arbitration a wage issue (Transcript, page 18), and further erred in considering said matter in its opinion (Opinion, page 12).

41. The court erred in overruling defendants' objections to the admission in evidence of the 1947-1948 agreement between the union and the Hawaiian sugar industry, Exhibit 3 (Transcript, page 27), and the letter of July 11, 1946, Exhibit 4 (Transcript, page 28).

42. The court erred in overruling defendants' objections to the admission in evidence of, and in failing to strike, the oral decision of the Honorable Cable A. Wirtz in the case of Territory v. Basiliso Arruiza, Exhibit 13 (Transcript, pages 190-192).

43. The court erred (Opinion, pages 101-102) in holding and decreeing that the union and the class representatives were entitled to relief against the

criminal statutes, and further erred in considering such matters when the complaints failed to allege, as to such union and class representatives, any justiciable controversy.

44. The court erred in holding inapplicable the doctrine that "he who comes into equity must come with clean hands" (Opinion, pages 81-82).

45. The court erred in finding true and giving weight to the statements of the witness Hall (Opinion, pages 12, 18) that the charges during the sugar strike under the unlawful assembly and riot act struck terror into the workers, that the enforcement of the said unlawful assembly and riot act and the conspiracy law necessitated a decision to terminate the pineapple workers strike, and that the union could not attempt a longshoremen's strike with the unlawful assembly and riot act hanging over their heads.

46. The court erred in overruling defendants' objections to, and in failing to strike, the following testimony:

(a) Testimony of the witness Hall concerning the longshoremen's strike not attempted by the union (Transcript, pages 21-22).

(b) Testimony of the witness Rania that the arrests of union members took away union membership (Transcript, pages 45-46).

(c) Testimony of the witness De la Cruz as to the effect on the pineapple strike of the number of arrests on the Island of Lanai during that strike (Transcript, pages 141-142), and the effect of loss

of the pineapple strike on the membership (Transcript, pages 142-144).

(d) Testimony of the witness Kawano as to the effect of the unlawful assembly and riot statute upon the ILWU (Transcript, pages 196-197).

47. The court erred in finding and concluding that the pending criminal prosecutions were "being carried on for the purpose of attack upon a labor movement rather than for the ends of justice" and were "not in good faith" (Opinion, pages 32-33, 78-79); and the court further erred in considering such matters when it was only alleged that plaintiffs were forbidden rights which were not prohibited to the other disputants in the strike situation and other groups in the community (Complaint, Civil No. 828, par. XIV, subpar. (6); Complaint, Civil No. 836, par. XI, subpar. (6)), which allegations were unsupported by the evidence or findings.

48. The court erred in concluding that if an action be brought under the Civil Rights Act to restrain criminal proceedings the motives of the prosecutor are relevant, though concededly "not relevant to the ordinary criminal proceeding" (Opinion, page 78).

49. The court erred in overruling defendants' objections to the question asked the defendant Crockett as to whether he had ever prosecuted any person for unlawful assembly and riot except as it grew out of a labor dispute (Transcript, page 282).

50. The court erred in finding "that the unlawful assembly and riot act has been employed by the

Territory only against labor groups in labor disputes, at least for the last three decades" (Opinion, pages 33, 79).

51. The court erred in overruling defendants' objections to, in failing to strike, and in giving weight to the testimony concerning incidents on the Island of Oahu (Transcript, pages 66-68, 287, 290; Opinion, pages 30-31, 78).

52. The court erred in overruling defendants' objection to, in failing to strike, and in giving weight to the testimony and exhibits concerning Mac Masato Yamauchi (Transcript, pages 54-55; Opinion, pages 25, 32).

53. The court erred in finding that excessive bail was required (Opinion, page 31).

54. The court erred in finding that the 1946 grand jury of the Second Circuit named as a defendant in an indictment Jose Pias, a dead man (Opinion, page 22, note 23).

55. The court erred in taking judicial notice of the employment of special prosecutors paid from private funds in labor cases in 1910 and 1924 (Opinion, pages 16-17).

56. The court erred in denying defendants' motions in Civil Nos. 828 and 836 to dismiss so much of the complaints as purported to allege claims for relief on account of the selection and composition of the 1947 grand jury in the Second Judicial Circuit of the Territory of Hawaii, and the court further erred in denying defendants' motions for sum-

mary judgments (part VII of the motion in Civil No. 828; part VI of the motion in Civil No. 836).

57. The court erred in denying defendants' objections to, and motion to strike, the testimony and exhibits relating to the 1947 grand jury of the Second Circuit Court, Territory of Hawaii (Transcript, pages 4-6, 204).

58. The court erred in holding that the Civil Rights Acts confer upon a federal district court the power to entertain and adjudicate allegations presented by one who is a defendant in a territorial criminal case concerning alleged deprivation of his rights under the Constitution in the selection of a territorial grand jury (Opinion, page 88).

59. The court erred in holding that the allegations of the complaint as to the composition of the 1947 territorial grand jury stated a justiciable controversy in a United States District Court (Opinion, pages 87-89).

60. The court erred in holding that it would assume equitable jurisdiction of pending territorial criminal cases and adjudicate all the material issues (Opinion, page 89).

61. The court erred in reviewing the rulings of the Honorable A. M. Cristy, Substitute Judge, Second Circuit Court, Territory of Hawaii, in connection with the challenges to the grand jury made by the plaintiffs in Civil No. 828 (Opinion, pages 91, 100).

62. The court erred in holding that the plaintiffs in Civil No. 836 could attack the composition

of the territorial grand jury in the federal court (Opinion, pages 88-89), when they had not challenged the grand jury in the territorial court, pleaded to the indictment, or in any way exhausted their remedies in the territorial courts or upon appeal therefrom.

63. The court erred in construing the complaint in Civil No. 836 as alleging that the persons who challenged the grand jury in the Circuit Court of the Territory were plaintiffs in Civil No. 836 (Opinion, page 8).

64. The court erred in construing Rule 18 of the Rules of the Supreme Court of Hawaii as only providing for a challenge to the grand jury before the first retirement of a newly impaneled grand jury (Opinion, pages 85-86).

65. The court erred in holding that the 1947 grand jury of the Second Circuit was constituted illegally (Opinion, page 98).

66. The court erred (Opinion, pages 99-100) in holding that the 1947 grand jury list of the Second Circuit was constituted in disregard of the Fifth Amendment's guarantee of indictment by a grand jury.

67. The court erred (Opinion, pages 99-100) in holding that the 1947 grand jury list of the Second Circuit was constituted in disregard of the local laws.

68. The court erred in finding, concluding and decreeing that the indictment in Criminal No. 2365 returned by the grand jury of the Second Circuit,

Territory of Hawaii, on December 2, 1947 against the plaintiff Joseph Kaholokula and the others named in paragraph 11 of the decree in Civil No. 836 was void and should be held for naught.

69. The court erred in the significance given by it to the term "haole," and in making findings as to the number of haoles on the 1947 grand jury list of the Second Circuit as compared with the number of haoles in Maui County (Opinion, pages 14-16, 92, 95).

70. The court erred in setting up an arbitrary classification consisting of the employer-entrepreneur group and their salaried employees and in finding that eighty-four per cent of the persons on the 1947 grand jury list of the Second Circuit belonged to such class (Opinion, page 92).

71. The court erred in setting up an arbitrary classification consisting of laboring men, and in finding that six persons on the 1947 grand jury list of the Second Circuit belonged to such class (Opinion, page 93).

72. The court erred in comparing the percentage of male laborers in the total male population of Maui County with the percentage of laborers on the 1947 grand jury list of the Second Circuit (Opinion, page 93).

73. The court erred in finding that all of the individual plaintiffs in both causes, other than Rania and Kawano, are employed in either the sugar industry or the pineapple industry (Opinion, page 5).

74. The court erred in finding that all of the individual plaintiffs in both causes other than Rania

and Kawano were daily wage earners (Opinion, page 5).

75. The court erred in finding a deliberate weighting of the grand jury list in favor of haoles and businessmen and against the laboring men of the community (Opinion, pages 95, 98).

76. The court erred in considering the number of persons on the 1946 grand jury list who also appeared on the previous year's list, when the 1946 list was not in issue and when the court had found that the 1947 list was not repetitive of the previous year's list (Opinion, page 97).

77. The court erred in considering the registration for the November 5, 1946 election (Opinion, pages 92-93), when the jury commissioners commenced their work prior thereto and based their work on the 1944 list of registered voters.

78. The court erred in finding that Patrick Ortello, Vicente Engoring and Salvadore Seno were Filipinos qualified for jury service (Opinion, page 93, footnote 94).

79. The court erred in finding a deliberate exclusion of Filipinos from the 1947 grand jury list (Opinion, page 95).

80. The court erred in holding that items 3 and 7 of the forms of questionnaire submitted to prospective jurors had no lawful purpose (Opinion, page 98).

81. The court erred in overruling defendants'

objections to the giving by the witness Reinecke of his opinion as to whether the 1947 grand jury list represented a cross-section of the community of Maui County and his opinion as to what constitutes a cross-section (Transcript, pages 272-275).

82. The court erred in overruling defendants' objections to testimony and exhibits concerning the years 1938 and 1939, to wit, the testimony of the witness Reinecke concerning personnel in executive positions, Gilmore's manual (Exhibit 18), the testimony of the witness Reinecke concerning interlocking of investments and offices in industry, and the monograph "Labor in the Territory of Hawaii 1939" (Exhibit 19). (Transcript, pages 222, 224, 232.)

83. The court erred in overruling defendants' objections to evidence concerning the members of the Maui Chamber of Commerce who were on the grand jury list (Transcript, pages 79-80), the members of the Maui Junior Chamber of Commerce who were on the grand jury list (Transcript, pages 93-94), and the resolution of the Maui Chamber of Commerce, Exhibit 8 (Transcript, pages 77-78), and erred in failing to strike the same.

84. The court erred in overruling defendants' objections to the admission in evidence of exhibits which in the grand jury proceedings in the Circuit Court of the Second Judicial Circuit were only marked for identification, to wit, the following parts of Exhibit 25: Movants' Exhibits A, 10 and 20 (Transcript, May 1, 1948, page 5).

85. The court erred in overruling defendants' motion to strike the testimony of the witness De la Cruz as to a conversation with Philip Gamponia in the year 1936 (Transcript, pages 474, 475), and erred in admitting in evidence the by-laws of the Oriental Benevolent Association, Exhibit 30 (Transcript, pages 464, 466).

86. The court erred in denying defendants' motion to dismiss the actions, made at the end of plaintiffs' direct case (Transcript, page 292).

87. The court erred in denying the motion of the defendant Jean Lane in Civil No. 828 to dismiss the action as to him (part XI of the motion in Civil No. 828).

88. The court erred in denying, in part, the motions of the defendant Walter D. Ackerman, Jr., Attorney General of the Territory of Hawaii, suggesting the abatement of the action as to the defendants E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy County Attorney for the County of Maui, and for the dismissal of the actions as to them, and erred in denying, in part, the applications for such dismissal made by the defendants E. R. Bevins and Wendell F. Crockett in their returns to the rule to show cause of February 23, 1949, that is to say, the court erred in retaining said defendants E. R. Bevins and Wendell F. Crockett as defendants individually and only dismissing them in their respective capacities

as County Attorney for the County of Maui and Deputy County Attorney for the County of Maui.

Dated at Honolulu, T. H., this 14th day of July, 1949.

/s/ RHODA V. LEWIS,
Assistant Attorney General.

[Endorsed]: Filed July 23, 1949.

[Title of Court of Appeals and Causes.]

STATEMENT OF POINTS ON APPEAL PURSUANT TO RULE 19

Come now E. R. Bevins and Wendell F. Crockett, defendant-appellants above named and for their statement of points on appeal pursuant to Rule 19 hereby join in and adopt the Statement of Points filed by the appellants Walter D. Ackerman, Jr., and Jean Lane.

Dated: July 15, 1949.

/s/ E. R. BEVINS,
In Propria Persona.

/s/ WENDELL F. CROCKETT,
In Propria Persona.

[Endorsed]: Filed July 23, 1949.

No. 12300 — No. 12301

United States

Court of Appeals

For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, and JEAN LANE, individually and as Chief of Police of the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County of Maui, and WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

No. 12301

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii,

Appellant,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County Maui, and WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

Supplemental

Transcript of Record

Page 1993 to Page 2001

FILED
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Appeals from the United States District Court for the Territory of Hawaii

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

No. 12300 – No. 12301

United States

Court of Appeals

For the Ninth Circuit.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, and JEAN LANE, individually and as Chief of Police of the County of Maui,

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vs.

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Appellees.

No. 12301

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii,

Appellant,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a voluntary unincorporated association and labor union, et al.,

Appellees.

E. R. BEVINS, individually and as County Attorney for the County Maui, and WENDELL F. CROCKETT, individually and as Deputy to the County Attorney for the County of Maui,

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Supplemental

Transcript of Record

Page 1993 to Page 2001

Appeals from the United States District Court for the Territory of Hawaii

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.

In the United States District Court for the District of Hawaii

Civil No. 828

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., et al.,
Defendants.

Civil No. 836

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, et al.,
Plaintiffs,

vs.

WALTER D. ACKERMAN, JR., et al.,
Defendants.

ORDER

And Now, to wit, this 10th day of October, 1949, it is

Ordered that the Clerk of this Court add to the transcript of the record in the above entitled cases and certify and transmit to the United States Court of Appeals for the Ninth Circuit a transcript of that portion of the minutes of the Court showing the sessions of the Court held by the Judges thereof

and the cases or matters heard at such sessions between April 15, 1948 and May 1, 1948, inclusive.

/s/ JOHN BIGGS, JR.,
Circuit Judge.

/s/ DELBERT E. METZGER,
Chief Judge.

/s/ GEORGE B. HARRIS,
District Judge.

[Endorsed]: Filed Oct. 10, 1949.

[Title of District Court and Causes.]

SUPPLEMENT TO RECORD ON APPEAL

I, Wm. F. Thompson, Jr., Clerk of the United States District Court for the District of Hawaii, do hereby certify that my minutes of proceedings in this court from and including April 15, 1948 to and including May 1, 1948, show that upon the following named dates, the following named judges sat and presided in civil cases numbered and entitled as follows:

That the title of the civil cases heard during that period are as follows:

Civil No. 456

United States of America,

Petitioner,

vs.

61.838 acres, more or less, of land situate in Hono-

lulu County, Island of Oahu, Territory of Hawaii, Hawaiian Dredging Co., etc., et al,

Defendants.

Civil No. 469

United States of America,

Petitioner,

vs.

25.86 acres of land, more or less, situate in Honolulu County, Territory of Hawaii; the Territory of Hawaii; et al,

Defendants.

Civil No. 496

United States of America,

Petitioner,

vs.

12.911 acres of land at Kapalama, Oahu, Territory of Hawaii; The Hawaiian Dredging Company, Ltd., etc., et al,

Defendants.

Civil No. 833

John E. Reinecke,

Plaintiff,

vs.

W. Harold Loper, individually and as Superintendent of Public Instruction of the Territory of Hawaii; Alex Smith, et al,

Defendants.

Civil No. 834

Aiko T. Reinecke,

Plaintiff,

vs.

W. Harold Loper, individually and as Superintendent of Public Instruction of the Territory of Hawaii; Alex Smith, et al,

Defendants.

Civil No. 828

International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union, et al,

Plaintiffs,

vs.

Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, et al,

Defendants.

Civil No. 836

International Longshoremen's & Warehousemen's Union, a voluntary, unincorporated association and labor union, et al,

Plaintiffs,

vs.

Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, et al,

Defendants.

That the dates and times when these cases were heard by the respective divisions of this court are as follows:

1948

Apr. 15—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 2 p.m. to 5:05 p.m.

Apr. 16—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 10 a.m. to 12:50 p.m., 2:30 p.m. to 5:14 p.m.

Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9:13 a.m. to 1:05 p.m.

Apr. 17—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 9:40 a.m. to 1:06 p.m.

Apr. 19—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 3:05 p.m. to 3:20 p.m.

Civil Nos. 833, 834, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 9:35 a.m. to 12:27 p.m., 2:15 p.m. to 2:35 p.m.

Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9:16 a.m. to 1 p.m.

Apr. 20—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 11:47 a.m. to 12:40 p.m.

Civil Nos. 833, 834, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 10:05 a.m. to 11:15 a.m.
Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9:03 a.m. to 12:55 p.m.

Apr. 21—Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9:01 a.m. to 1 p.m.

Apr. 22—Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9:01 a.m. to 1 p.m.

Apr. 23—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 9:35 a.m. to 12:24 p.m., 2:08 p.m. to 4:55 p.m.
Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9 a.m. to 12:55 p.m.

Apr. 26—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 9:30 a.m. to 12:30 p.m., 2 p.m. to 4:25 p.m.

Apr. 26—Civil Nos. 828, 836, Court Division No. 2, Biggs, Metzger and Harris, Presiding Judges, 9:55 a.m. to 12:35 p.m., 2 p.m. to 4:50 p.m.
Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9:10 a.m. to 1:20 p.m.

Apr. 27—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 10:15 a.m. to 11:20 a.m.
Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9:10 a.m. to 4:55 p.m.

Apr. 28—Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 8:45 a.m. to 12:20 p.m.

Apr. 29—Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 9:03 a.m. to 11:10 a.m., 12:30 p.m. to 2:31 p.m.

Apr. 30—Civil Nos. 456, 469, 496, Court Division No. 2, McLaughlin, Presiding Judge, 10:16 a.m. to 9:03 p.m.

May 1—Civil Nos. 828, 836, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges, 10:05 a.m. to 1:01 p.m.
Civil Nos. 833, 834, Court Division No. 1, Biggs, Metzger and Harris, Presiding Judges.

I further certify that the records of this court show that civil cases Nos. 456, 469, and 496 were filed in this court on the respective dates, July 19, 1941, March 20, 1942, and October 25, 1943; that it was decided on December 8, 1947 that these three cases would be tried together as one and were set for trial by and before Judge McLaughlin, first, for March 1, 1948, thereafter reset for March 11, 1948, and thereafter reset for March 15, 1948, upon

which later date trial began before Judge McLaughlin and continued on March 16, 17, 18, 19, 22, 23, 24, 25, and 29, April 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 16, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30, 1948; that the order for consolidation for trial was formally entered and filed on March 1, 1948.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 11th day of October, 1949.

[Seal]: /s/ WM. F. THOMPSON, JR.,
Clerk, U. S. District Court,
District of Hawaii.

[Endorsed]: Nos. 12300 and 12301. United States Court of Appeals for the Ninth Circuit. Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii and Jean Lane, individually and as Chief of Police of the County of Maui, Appellants, vs. International Longshoremen's & Warehousemen's Union, a voluntary unincorporated association and labor union, et al., Appellees. E. R. Bevins, individually and as County Attorney for the County of Maui and Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, Appellant, vs. International Longshoremen's & Warehousemen's Union, a voluntary unincorporated association and labor union, et al., Appellees. Walter D. Ackerman, Jr., individually and as Attorney General of the Territory of Hawaii, Appellant, vs. International

Longshoremen's & Warehousemen's Union, a voluntary unincorporated association and labor union, et al., Appellees. E. R. Bevins, individually and as County Attorney for the County of Maui, and Wendell F. Crockett, individually and as Deputy to the County Attorney for the County of Maui, Appellants, vs. International Longshoremen's & Warehousemen's Union, a voluntary unincorporated association and labor union, et al., Appellees. Supplemental Transcript of Record. Appeals from the United States District Court for the District of Hawaii.

Filed: October 13, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, and JEAN LANE, individually and as Chief of Police of the County of Maui,

Appellants,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a Voluntary Unincorporated Association and Labor Union, et al.,

Appellees.

No. 12300

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii,

Appellant,

vs.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a Voluntary Unincorporated Association and Labor Union, et al.,

Appellees.

No. 12301

Upon Appeal from the United States District Court for the District of Hawaii.

APPELLANTS' OPENING BRIEF

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SUBJECT INDEX

	Page
JURISDICTIONAL STATEMENT	1-3
STATEMENT OF THE CASE	3-17
A. No. 12301 (continued under Part C)	3-6
Proceedings in territorial courts	3-5
Proceedings in the court below; parties	5
Same; plaintiffs' complaint	5-6
B. No. 12300 (continued under Part C)	6-9
Proceedings in territorial courts	6-8
Proceedings in the court below; parties	8-9
Same; plaintiffs' complaint	9
C. Nos. 12300 and 12301	9-12
Defendants' motions in the court below	9-11
Disposition of defendants' motions in the court below	11
Proceedings after denial of defendants' motions	12
Decrees	12
D. Questions of fact raised by the pleadings	13-15
The question of peaceful picketing	13-14
The question of denial of equal protection	14-15
The question of jurisdictional amount	15
The question of the grand jury	15
E. Questions of fact not raised by the pleadings	15-17
The question of good faith	15-17
The question of impact of the statutes on labor relations	17
STATEMENT OF THE CASE, CONTINUED; FACTS IN THE TERRITORIAL CRIMINAL CASES	17-20
SPECIFICATION OF ERRORS	20-37
SUMMARY OF ARGUMENT	37-43
ARGUMENT	43-162
I. THE COURT WAS NEITHER A STATUTORY THREE-JUDGE COURT NOR A COURT EN BANC. HOWEVER CONSTITUTED, THE COURT LACKED JURISDICTION OF THE SUBJECT MATTER	43-48
A. THE COURT WAS NEITHER A STATUTORY THREE-JUDGE COURT NOR A COURT EN BANC	43-45
B. THE COURT LACKED JURISDICTION OF THE SUBJECT MATTER	45-48

SUBJECT INDEX—Continued

Page

II. PLAINTIFFS DID NOT SHOW A CASE ARISING UNDER THE CIVIL RIGHTS ACT OR A LAW REGULATING COMMERCE 49-51

A. PLAINTIFFS DID NOT SHOW A CASE ARISING UNDER THE CIVIL RIGHTS ACT 49-50

B. PLAINTIFFS DID NOT SHOW A CASE ARISING UNDER A LAW REGULATING COMMERCE 50-51

III. THE COURT ERRED IN PLACING ITS OWN CONSTRUCTION UPON THE UNLAWFUL ASSEMBLY AND RIOT ACT, DIFFERING FROM THAT OF THE SUPREME COURT OF HAWAII AND IN INVALIDATING THE STATUTE ON THE BASIS OF ITS OWN CONSTRUCTION 52-71

A. ORIGIN OF THE STATUTE; 1949 AMENDMENTS 52

B. EFFECT OF THE DECISION OF THE SUPREME COURT OF HAWAII IN TERRITORY v. KAHOLOKULA (37 HAW. 625) 53-57

The decision is binding and conclusive on the parties who took the appeal to the Supreme Court of Hawaii 53-54

The decision is determinative of the construction of the Unlawful Assembly and Riot Act 54-56

Same rules of deference in matters of statutory interpretation apply in Hawaii 56-57

C. THE UNLAWFUL ASSEMBLY AND RIOT ACT AS CONSTRUED BY THE SUPREME COURT OF HAWAII WAS VALID 57-71

The statute codifies common law offenses; dispersal of unlawful assemblies and riots is not involved 57-61

The terms of the statute being common law terms, the statute affords an ascertainable standard of guilt 62

The requirement that what occurs must strike terror or tend to strike terror into others, as demonstrative of a clear and present danger of breach of the peace 62-64

The test of accountability 65-70

The maximum punishment allowed by the statute 70-71

SUBJECT INDEX—Continued

Page

IV. THE COURT ERRED IN INVALIDATING THE CONSPIRACY STATUTE 71-74

A. ORIGIN OF THE STATUTE; 1949 AMENDMENTS 71

B. THE CRIMINAL CASE SHOULD HAVE BEEN ALLOWED TO PROCEED UNDER THE CONSPIRACY STATUTE, SINCE AT LEAST A PORTION OF THE STATUTE WAS VALID AND INDEPENDENTLY SUSTAINABLE 71-74

V. PROSECUTION OF THE PENDING CASES UNDER THE RIOT AND CONSPIRACY STATUTES WOULD NOT DENY PLAINTIFFS THE EQUAL PROTECTION OF THE LAWS 75-82

A. NATURE OF PLAINTIFFS' CLAIMS 75

B. ESSENTIAL ELEMENTS OF A CLAIM OF DENIAL OF EQUAL PROTECTION IN THE ADMINISTRATION OF CRIMINAL LAWS 75-82

Applicability of equal protection clause in the territories 75-76

Pertinency of a claim of denial of equal protection in the administration of criminal laws 76

Essential elements of a claim of denial of equal protection in the administration of laws 76-78

C. THE FACTS IN THESE CASES 78-82

VI. THE COURT ERRED IN ENJOINING PROCEEDINGS IN THE PENDING CRIMINAL PROSECUTIONS, CRIMINAL NOS. 2365, 2412, 2413 and 2419 83-92

A. A FEDERAL EQUITY COURT CANNOT ENJOIN PENDING STATE OR TERRITORIAL CRIMINAL PROSECUTIONS 83-85

Nature of the intervention by the court below 83-84

The doctrine of Cline v. Frink Dairy Co. and Ex parte Young; the distinction between injunctions against pending criminal prosecutions and against future prosecutions; the distinction is jurisdictional 84-85

B. A FEDERAL COURT IS PROHIBITED BY STATUTE FROM ENJOINING PENDING STATE OR TERRITORIAL COURT PROCEEDINGS 86-88

Preliminary statement 86

Application of the statute to pending cases 86

SUBJECT INDEX—Continued

Page

The prohibitory effect of the statute; exceptions to the statute 86-88

C. THE CIVIL RIGHTS ACT DID NOT ENLARGE THE EQUITY JURISDICTION OF FEDERAL COURTS 88-92

VII. NO CAUSE OF ACTION WAS STATED BY THE UNION OR CLASS REPRESENTATIVES, AND NOTHING IS INVOLVED EXCEPT THE PENDING CRIMINAL PROSECUTIONS 92-99

Threatened further criminal prosecutions not involved; ILWU and class representatives did not state a cause of action 92-96

Chief of police of Maui county should have been dismissed from the case 96

Supposed resemblance of these cases to A. F. of L. v. Watson 96-99

VIII. PLAINTIFFS DID NOT COME INTO EQUITY WITH CLEAN HANDS 100-103

IX. ASSERTED BAD FAITH OF THE PROSECUTION IS NOT A GROUND FOR FEDERAL COURT INTERVENTION IN A PENDING STATE OR TERRITORIAL CRIMINAL CASE 103-109

Preliminary statement 103

Instances of criminal cases initiated before the application for federal court intervention 104-108

Cases of threatened future criminal prosecutions 108-109

X. THE COURT ERRED IN ITS FINDING THAT THE CRIMINAL PROSECUTIONS WERE NOT IN GOOD FAITH 110-134

Preliminary statement 110

Motives of the prosecutor are irrelevant; assumption of supervisory authority by the trial court 110-112

People of the Territory on trial; the pattern of the precedent set by the lower court's opinion 112-114

Abuse of the doctrine of judicial notice; assumptions made by the court concerning labor-management relations 114-116

Land ownership; haoles 116-117

1929 amendment of the Unlawful Assembly and Riot Act 117-118

SUBJECT INDEX—Continued

Page

Employment of privately paid special prosecutors in 1924 118-119

Findings of interference with ILWU's success in strike action by reason of enforcement of Unlawful Assembly and Riot Act and the Conspiracy Statute 119-122

Incidents which the court held should have been prosecuted under the assault and battery statute.. 122-123

Disagreement between the police and the deputy county attorney as to the charges to be used..... 123-125

Arrests characterized by the court as mass arrests.. 125-128

The holding that excessive bail was required in many cases 128-129

Incidents in the city and county of Honolulu..... 129-131

Absence of prosecutions against others under the Unlawful Assembly and Riot Act..... 131-132

Procurement of the second indictment in Criminal No. 2365..... 132-133

Further errors in the admission and consideration of evidence 133-134

XI. THE COURT ERRED IN ENTERTAINING THE GRAND JURY ISSUE, AND ERRED IN CONCLUDING THAT THE GRAND JURY WAS CONSTITUTED ILLEGALLY 134-160

A. IN NO. 12300, THE GRAND JURY ISSUE IS MOOT 134-135

B. IN NO. 12301, THE COURT BELOW ERRED IN DECIDING THAT IT COULD AND SHOULD PASS UPON THE COMPOSITION OF THE GRAND JURY..... 135-143

Allegations of the complaint..... 135-136

Motions and objections of defendants..... 136

The opinion and the decree of the lower court.... 136-137

A grand jury challenge cannot be initiated collaterally 137-143

C. THE COURT BELOW ERRED IN CONCLUDING THAT THE GRAND JURY WAS CONSTITUTED ILLEGALLY 143-160

Preliminary statement 143-146

The alleged intentional exclusion of Filipinos.... 146-154

SUBJECT INDEX—Continued

Page

The alleged "weighting" of the grand jury list in favor of "businessmen" 155-160

The alleged exclusion of women 160

XII. THE COURT ERRED IN DENYING THE MOTION TO DISMISS THE DEFENDANTS BEVINS AND CROCKETT AFTER THEY HAD CEASED TO HOLD OFFICE 161-162

CONCLUSION 162-164

APPENDIX I—Notes cited to the text of the brief 165-188

APPENDIX II—The Unlawful Assembly and Riot Act as it read at the time of the cases below 188-192

APPENDIX III—Act 62 of the Session Laws of Hawaii 1949, an act relating to riots 192-195

APPENDIX IV—The Conspiracy Statute as it read at the time of the cases below 195-198

APPENDIX V—Act 10 of the Special Session Laws of Hawaii 1949, an act relating to conspiracy 198-200

APPENDIX VI—Statutes of the states within the Ninth Judicial Circuit defining the offenses of unlawful assembly, rout and riot, or providing for suppression of riots 201-213

APPENDIX VII—Laws relating to grand juries in the Territory of Hawaii 213-222

APPENDIX VIII—Affidavit of Rhoda V. Lewis, Assistant Attorney General, re "Suggestion for Incorporation in the Record on Appeal * * *" 223-224

TABLE OF AUTHORITIES

Cases

Page

A. F. of L. v. American Sash & Door Co., 335 U.S. 538, 69 S.Ct. 258, 93 L.Ed. Adv. Op. 209 182

A. F. of L. v. Watson, 327 U.S. 582, 66 S.Ct. 761, 90 L.Ed. 873 ..... 40, 45, 46, 55, 96, 97, 98, 101

Ah Sin v. Wittman, 198 U.S. 500, 25 S.Ct. 756, 49 L.Ed. 1142 77

Akins v. Texas, 325 U.S. 398, 66 S.Ct. 86, 90 L.Ed. 491 ..... 148, 149, 157

Alabama v. Arizona, 291 U.S. 286, 54 S.Ct. 399, 78 L.Ed. 798 138

Alaska v. Troy, 258 U.S. 101, 42 S.Ct. 241, 66 L.Ed. 487 75

Alesna v. Rice, 172 F. 2d 176, affirming 74 F. Supp. 865, cert. den. 338 U.S. 814 ..... 16, 17, 47, 48, 89, 95, 166, 167, 177

Algoma Plywood & Veneer Co. v. Wisconsin Board, 336 U.S. 301, 69 S.Ct. 584, 93 L.Ed. 541 ..... 98, 182

American League of the Friends of New Germany v. Eastmead, 116 N.J.Eq. 487, 174 Atl. 156 101

American Surety Co. v. Baldwin, 287 U.S. 156, 53 S.Ct. 98, 77 L.Ed. 231 ..... 53, 54

Andres v. United States, 333 U.S. 740, 68 S.Ct. 880, 92 L.Ed. 1055 47

Andrews v. Swartz, 156 U.S. 272, 15 S.Ct. 389, 39 L.Ed. 422 142

Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466, 80 L.Ed. 688 93

Atcherley, In re, 3 U.S.D.C. Haw. 404 (1909) 168

Atlantic Fishermen's Union v. Barnes, 71 F. Supp. 927 (D.C. Mass. 1947) 74, 90, 95

Aultman & Taylor Co. v. Brumfield, 102 Fed. 7 (C.C.N.D. Ohio 1900) appeal dismissed 22 S.Ct. 938, 46 L.Ed. 1265 ..... 90, 91

Babcock v. Noh, 99 F. 2d 738 (C.A. 9th 1938) 84, 176-177

Baker Driveaway Co. v. Hamilton, 29 F. Supp. 693 (D.C. Pa. 1939) 54

Ballard v. United States, 329 U.S. 187, 67 S.Ct. 261, 91 L.Ed 181 ..... 144, 145

Balzac v. Porto Rico, 258 U.S. 298, 42 S.Ct. 343, 66 L.Ed. 627 167

Banker's Casualty Co. v. Minneapolis, St. Paul Ry., 192, U.S. 371, 24 S.Ct. 325, 48 L.Ed. 484 51

Barsky v. United States, 167 F. 2d 241 (App.D.C. 1948), cert. denied 334 U.S. 843 77

Beal v. Missouri-Pacific R.R., 312 U.S. 45, 61 S.Ct. 418, 85 L.Ed. 577 ..... 85, 185, 186

Bell, Ex parte, 19 Cal. 2d 488, 122 P. 2d 22 ..... 73, 125

Blakeman v. City of Wichita, 93 Kan. 385, 144 Pac. 816 64

Bomar v. Keyes, 162 F. 2d 136, cert. denied 332 U.S. 825 49

Bonet v. Texas Co., 308 U.S. 463, 60 S.Ct. 349, 84 L.Ed. 401 ..... 57, 173

TABLE OF AUTHORITIES—Continued
Cases

Page

Borland v. Johnson, 88 F. 2d 376 (C.A. 9th 1937), cert. denied 302 U.S. 704 53

Bowles v. Willingham, 321 U.S. 503, 64 S.Ct. 641, 88 L.Ed. 892 .. 87

Boynton v. Fox West Coast Theatres, 60 F. 2d 851 (C.A. 10th 1932) 77, 80

Bridges v. California, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192 .. 61, 172

Broad-Grace Arcade Corp. v. Bright, 284 U.S. 588, 52 S.Ct. 137, 76 L.Ed. 507, affirming 48 F. 2d 348 ..... 77, 84, 179

Brotherhood of Railroad Trainmen v. Toledo, Peoria & Western R.R., 321 U.S. 50, 64 S.Ct. 413, 88 L.Ed. 534 102

Buck v. Gallagher, 36 F. Supp. 405 (W.D. Wash. 1940), appeal dismissed 315 U.S. 780 101

Buxbom v. City of Riverside, 29 F. Supp. 3 (S.D. Cal. 1939) 76, 77

Campose v. Central Cambalache, 157 F. 2d 43 (C.A. 1st), cert. den. 330 U.S. 842 173

Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 63

Carras v. Monaghan, 65 F. Supp. 658 (D.C.W.D. Pa. 1946) 89-90

Carter v. Texas, 177 U.S. 442, 20 S.Ct. 687, 44 L.Ed. 839 ..... 34, 140

Castle v. Castle, 281 Fed. 609 (C.A. 9th), cert. dismissed 254 U.S. 628, 667 173

Chandler v. Dix, 194 U.S. 590, 24 S.Ct. 766, 48 L.Ed. 1129 161

Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031 ..... 55, 60, 63, 171

Chicago v. Fieldcrest Dairies, 316 U.S. 168, 62 S.Ct. 986, 86 L.Ed. 1355 55

Chirillo v. Lehman, 312 U.S. 662, 61 S.Ct. 741, 85 L.Ed. 1108, affirming 38 F. Supp. 65 53

Cline v. Frink Dairy Co., 274 U.S. 445, 47 S.Ct. 681, 71 L.Ed. 1146 ..... 84, 107, 175, 179

Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. Adv. Op. 1221 118

Cole v. Arkansas, 338 U.S. 345, 94 L.Ed. Adv. Op. 139, affirming Cole & Jones v. State, 214 Ark. 387, 216 S.W. 2d 402 ..... 39, 61, 65, 66, 67, 68, 73, 183

Collins v. Johnston, 237 U.S. 502, 35 S.Ct. 649, 59 L.Ed. 1071 118

Commission v. Brashear Lines, 312 U.S. 621, 61 S.Ct. 784, 85 L.Ed. 1083 3

Commonwealth v. Paul, 145 Pa. Super. 548, 21 A. 2d 421 63

Cone v. State, 184 Ga. 316, 191 S.E. 250 77

Connally v. General Construction Co., 269 U.S. 385 62

TABLE OF AUTHORITIES—Continued

Cases

Page

Connley v. United States 41 F. 2d 49 129
Consolidated Freightways v. Railroad Commission, 36 F. Supp. 269 (D.C. Cal.) 54
Cooper v. Johnson, 81 Mo. 483 66
Cox v. New Hampshire, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 55
Crawford v. United States 30 App. D.C. 1 62
Creash v. State, 131 Fla. 111, 179 So. 149 77
Crouch, Ex parte, 112 U.S. 178, 5 S.Ct. 96, 28 L.Ed. 690 91-92
Curran, In re, 4 U.S.D.C. Haw. 730 (1916) 168
Daniel v. Family Security Life Insurance Co., 336 U.S. 220, 69 S.Ct. 550, 93 L.Ed. Adv. Op. 483 118
Davega-City Radio Inc. v. Boland, 23 F. Supp. 969 (D.C. N.Y. 1938) 54, 90
Davis & Farnum Mfg. Co. v. Los Angeles, 189 U.S. 207, 23 S.Ct. 498, 47 L.Ed. 778 85
DeCastro v. Board of Commissioners, 322 U.S. 451, 64 S.Ct. 1121, 88 L.Ed. 1384 56
Defiance Water Co. v. Defiance, 191 U.S. 184, 24 S.Ct. 63, 48 L.Ed. 140 50
DeJonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255, 81 L.Ed. 278 73
District of Columbia v. Buckley, 128 F. 2d 17 (App. D.C. 1942), cert. denied 317 U.S. 658 111
Dominion Hotel v. Arizona, 249 U.S. 265, 39 S.Ct. 273, 63 L.Ed. 597 118
Dorsey v. Gill, 148 F. 2d 857 (App. D.C. 1945), cert. denied 325 U.S. 890 107
Douglas v. Jeannette, 319 U.S. 157, 63 S.Ct. 877, 87 L.Ed. 1324 ..... 85, 89, 92, 103, 104, 108, 177, 184, 186
Dye v. Johnson, 338 U.S. 864, 94 L.Ed. Adv. Op. 67 106
East Coast Lumber Terminal Inc. v. Town of Babylon, 174 F. 2d 106 (C.A. 2d 1949) 107
Erie R.R. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 .. 54
Essanay Film Co. v. Kane, 258 U.S. 358, 42 S.Ct. 318, 66 L.Ed. 658 86
Everett v. State, 26 Ala. App. 502, 163 So. 667, cert. denied 231 Ala. 110, 163 So. 667 111
Farr v. O'Keefe, 27 F. Supp. 216 (D.C. Miss. 1939) 101
Farrington v. Tokushige, 273 U.S. 284, 47 S.Ct. 406, 71 L.Ed. 646 75
Fay v. New York, 332 U.S. 261, 67 S.Ct. 1613, 91 L.Ed. 2043 .. 147, 148
Federation of Labor v. McAdory, 325 U.S. 450, 65 S.Ct. 1384, 89 L.Ed. 1725 ..... 56, 94

TABLE OF AUTHORITIES—Continued
Cases

Page

Fenner v. Boykin, 271 U.S. 240, 46 S.Ct. 492, 70 L.Ed. 927....85, 181
First National Bank & Trust Co. v. Village of Skokie, 173 F. 2d 1 (C.A. 7th 1949) 87
Fox v. Washington, 236 U.S. 273, 35 S.Ct. 383, 59 L.Ed. 573....71, 73
Frazier Co. v. Long Beach, 77 F. 2d 764 (C.A. 3d 1935) 54
Frost v. Corporation Commission, 278 U.S. 515, 49 S.Ct. 235, 73 L.Ed. 483..... 70
Frye, Ex parte, 156 S.W. 2d 531 (Texas 1941) 183
Fukunaga v. Territory, 33 F. 2d 396 (C.A. 9th 1929), cert. denied 280 U.S. 593..... 174
General Exporting Co. v. Star Transfer Line, 136 F. 2d 329 (C.A. 6th 1943) 54
Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. Adv. Op. 649..... 182
Gibson v. Mississippi, 162 U.S. 565, 16 S.Ct. 904, 40 L.Ed. 1075 .....91, 138
Giles v. Harris, 189 U.S. 475, 23 S.Ct. 639, 47 L.Ed. 909..... 89
Gitlow v. New York, 268 U.S. 652, 45 S.Ct. 625, 69 L.Ed. 1138.... 71
Glasgow v. Moyer, 225 U.S. 420, 32 S.Ct. 753, 56 L.Ed. 1147..... 107
Glasser v. United States, 315 U.S. 60, 62 S.Ct. 457, 86 L.Ed. 680.. 144
Goesaert v. Cleary, 335 U.S. 464, 69 S.Ct. 198, 93 L.Ed. 187..... 118
Gregg v. Winchester, 173 F. 2d 512, cert. denied 338 U.S. 847.... 86
Grell v. United States, 112 F. 2d 861 (C.A. 8th 1940) 77
Grosjean v. American Press, 297 U.S. 233, 56 S.Ct. 444, 80 L.Ed. 660 46
Gully v. First National Bank, 299 U.S. 109, 57 S.Ct. 96, 81 L.Ed. 70 .....50, 51
Gusman v. Marrero, 180 U.S. 81, 21 S.Ct. 293, 45 L.Ed. 436..... 138
Hague v. CIO, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 .....17, 41, 45, 46, 49, 50, 102, 108, 109, 171, 184
Hale v. Crawford, 65 F. 2d 739 (C.A. 1st), cert. denied 290 U.S. 674 142
Hall v. California Packing Corp., 72 F. Supp. 533 (U.S.D.C. Haw. 1947) 130
Hall v. Hawaiian Pineapple Co., 72 F. Supp. 533 (U.S.D.C. Haw. 1947) 130
Harkrader v. Wadley, 172 U.S. 148, 19 S.Ct. 119, 43 L.Ed. 399 .....84, 176, 178, 179
Hawaiian Trust Co. v. Smith, 31 Haw. 196..... 75
Hawk, Ex parte, 321 U.S. 114, 64 S.Ct. 448, 88 L.Ed. 572..92, 106, 107

TABLE OF AUTHORITIES—Continued
Cases

Page

Healy v. Ratta, 292 U.S. 263, 54 S.Ct. 700, 78 L.Ed. 1248, 67 F. 2d 554 3

Hebert v. Louisiana, 272 U.S. 312, 47 S.Ct. 103, 71 L.Ed. 270 54

Hemsley v. Meyers, 45 Fed. 283 (C.C. Kan. 1891) 90

Hirabayashi v. United States, 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774 ..... 75, 76

Howard v. Fleming, 191 U.S. 126, 24 S.Ct. 49, 48 L.Ed. 121 118

Hurn v. Oursler, 289 U.S. 238, 53 S.Ct. 586, 77 L.Ed. 1148 142

Hygrade Provision Co. v. Sherman, 266 U.S. 497, 45 S.Ct. 141, 69 L.Ed. 402 181

Hynes v. Grimes Packing Co., 337 U.S. 86, 69 S.Ct. 968, 93 L.Ed. Adv. Op. 964 85

ILWU v. Wirtz, 170 F. 2d 183 (C.A. 9th), cert. denied 336 U.S. 919 119

ILWU, Sunset Line & Twine Co., In re, 79 N.L.R.B. No. 207, Case No. 20-CB-1 (October 22, 1948) 102, 123, 184

International Union U.A.W.A. v. Wisconsin Board, 336 U.S. 245, 69 S.Ct. 516, 93 L.Ed. Adv. Op. 510 ..... 73, 182, 183

Jackie Cab Co. v. Chicago Park District, 366 Ill. 474, 9 N.E. 2d 213 (1937) 76, 77

Jewel Tea Co. v. Lee's Summit, Mo., 198 Fed. 532 (D.C. Mo. 1912), affirmed 217 Fed. 965 ..... 84, 177

Jones v. Montague, 194 U.S. 147, 24 S.Ct. 611, 48 L.Ed. 913 188

Jugiro, In re Shibuya, 140 U.S. 291, 11 S.Ct. 770, 35 L.Ed. 510 133

Kaizo v. Henry, 211 U.S. 146, 29 S.Ct. 41, 53 L.Ed. 125 ..... 140, 142

Kentucky v. Powers, 201 U.S. 1, 26 S.Ct. 387, 50 L.Ed. 633 ..... 91, 104

Kimbrel v. Territory, 41 F. 2d 740 (C.A. 9th 1930) 174

Kinnebrew, Ex parte, 35 Fed. 52 60

Knights of the Ku Klux Klan v. Strayer, 34 F. 2d 432 (C.A. 3d) 101

Kovacs v. Cooper, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. Adv. Op. 379 ..... 55, 62

La Prade, Ex parte, 289 U.S. 444, 53 S.Ct. 682, 77 L.Ed. 1311 ..... 80, 94, 161

Lamson v. Superior Court, 12 F. Supp. 812 ..... 90, 105

Lanzetta v. New Jersey, 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 62

Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 69 S.Ct. 1457, 93 L.Ed. Adv. Op. 1392 161

Lau Hu Yuen v. United States, 85 F. 2d 327 (C.A. 9th 1936) 79

Cases

Page

Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525, 69 S.Ct. 251, 93 L.Ed. 201 ..... 73, 182
Live-Stock Dealers' & Butchers' Assn. v. Crescent Live-Stock Landing & Slaughter-House Co., 1 Abb. U.S. 388, 15 Fed. Cas. p. 649, Case No. 8408 (C.C. La. 1870) 90
Local 1150 United Electrical, Radio & Machine Workers, In re, 84 N.L.R.B. No. 110, Case No. 13-CB-5 (June 30, 1949) 103, 184
Looney v. Eastern Texas R.R., 247 U.S. 214, 38 S.Ct. 460, 62 L.Ed. 1084 87
Mandeville v. Canterbury, 318 U.S. 47, 63 S.Ct. 472, 87 L.Ed. 605 87
Marshall, In re, 1 U.S.D.C. Haw. 34 (1900) 168
Mason v. Smith, 162 F. 2d 336 (C.A. 9th), cert. denied 323 U.S. 747, 325 U.S. 839 142
McLeod v. Majors, 102 F. 2d 128 (C.A. 5th) 141
McNutt v. General Motors, 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135 46
Michael v. Cockerell, 161 F. 2d 163 (C.A. 4th 1947) 162
Mickey v. Kansas City, 43 F. Supp. 739 (D.C.W.D. Mo. 1942) 90
Mills v. Green, 159 U.S. 651, 16 S.Ct. 132, 40 L.Ed. 293 188
Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 ....92, 105
Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 186
Murray v. Louisiana, 163 U.S. 101, 16 S.Ct. 990, 41 L.Ed. 87 ....91, 138
Musser v. Utah, 333 U.S. 95, 68 S.Ct. 397, 92 L.Ed. 562 ..... 56, 74
Napa Valley Electric Co. v. Railroad Commission, 257 Fed. 197 (D.C. Cal.) 54
Nash v. United States, 229 U.S. 373, 33 S.Ct. 780, 57 L.Ed. 1232..62, 63
National Insurance Co. v. Tidewater Co., 337 U.S. 582, 69 S.Ct. 1173, 93 L.Ed. Adv. Op. 1118 50
Neal v. Delaware, 103 U.S. 370, 26 L.Ed. 567 ..... 91, 138, 148
New York v. Eno, 155 U.S. 89, 15 S.Ct. 30, 39 L.Ed. 80 91
New York Central R.R. v. United States, 212 U.S. 481, 29 S.Ct. 304, 53 L.Ed. 613 73
Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074..148, 154
Otis v. International Mercantile Marine Co., 95 F. 2d 539 (C.A. 9th) 188
Packard v. Banton, 264 U.S. 140, 44 S.Ct. 257, 68 L.Ed. 596 ..... 46, 85
Patton v. Mississippi, 332 U.S. 463, 68 S.Ct. 184, 92 L.Ed. 76 ..... 148, 152, 154

Cases

	Page
Pennsylvania v. Ashe, 302 U.S. 51, 58 S.Ct. 59, 82 L.Ed. 43	118
People v. Anderson, 117 Cal. App. 763, 1 P. 2d 64	80
People v. Bradley, 137 Cal. App. 225, 30 P. 2d 438	80
People v. Bundte, 87 Cal. App. 2d 735, 197 P. 2d 823, cert. denied 337 U.S. 915	64, 69, 80
People v. Dunn, 1 Cal. App. 2d 556, 36 P. 2d 1096	80
People v. Judson, 11 Daly (N.Y.) 1	58
People v. Kerrick, 86 Cal. App. 542, 261 Pac. 756 (Okla. 1927)	63
People v. Lamson, 12 F. Supp. 813, petition for leave to appeal denied 80 F. 2d 388 (C.A. 9th)	90, 105
People v. Montgomery, 47 Cal. App. 2d 1, 117 P. 2d 437	76
People v. Montoya, 17 Cal. App. 2d 547, 62 P. 2d 383	80
People v. Moore, 87 Cal. App. 2d 753, 197 P. 2d 835, cert. denied 337 U.S. 915	69
People v. Sklar, 111 Cal. App. 776, 292 Pac. 1068	61, 80
People v. Spear, 32 Cal. App. 2d 165, 89 P. 2d 445, cert. denied 308 U.S. 555	80
People v. Yuen, 32 Cal. App. 2d 151, 89 P. 2d 438, 90 P. 2d 291, cert. denied 308 U.S. 555	80, 111
Philadelphia Co. v. Stimson, 223 U.S. 605, 32 S.Ct. 340, 56 L.Ed. 570	85
Pierre v. Louisiana, 306 U.S. 354, 59 S.Ct. 536, 83 L.Ed. 757	148
Poresky, Ex parte, 290 U.S. 30, 54 S.Ct. 3, 78 L.Ed. 152	94
Priceman v. Dewey, 81 F. Supp. 557 (D.C. N.Y. 1949)	84, 177, 180
Pughe v. Patton, 21 F. Supp. 182 (D.C. Tex. 1937)	94
Pullman Co. v. Knott, 243 U.S. 447, 37 S.Ct. 428, 61 L.Ed. 841	161
Railroad Commission v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971	39, 55, 74
Reid v. Brookeville, 39 F. Supp. 30	186
Republic v. Carvalho, 10 Haw. 446	81
Rescue Army v. Municipal Court, 331 U.S. 549	56, 60, 73
Rex v. Cox, 4 Car. & P. 538, 172 Eng. Rep. 815	171
Rex v. Fursey, 6 Car. & P. 80, 172 Eng. Rep. 1155	59, 172
Rex v. James, 5 Car. & P. 153	172
Richardson v. McChesney, 218 U.S. 487, 31 S.Ct. 43, 54 L.Ed. 1121	188
Ritholz v. North Carolina Board, 18 F. Supp. 409 (D.C. N.C. 1937)	54
Rosenberg v. Arrowsmith, 82 N.J. Eq. 570, 89 Atl. 524 (1914)	101

TABLE OF AUTHORITIES—Continued
Cases

Page

Lincoln Federal Labor Union v. Northwestern Iron & Metal Co., 335 U.S. 525, 69 S.Ct. 251, 93 L.Ed. 201 ..... 73, 182

Live-Stock Dealers' & Butchers' Assn. v. Crescent Live-Stock Landing & Slaughter-House Co., 1 Abb. U.S. 388, 15 Fed. Cas. p. 649, Case No. 8408 (C.C. La. 1870) 90

Local 1150 United Electrical, Radio & Machine Workers, In re, 84 N.L.R.B. No. 110, Case No. 13-CB-5 (June 30, 1949) 103, 184

Looney v. Eastern Texas R.R., 247 U.S. 214, 38 S.Ct. 460, 62 L.Ed. 1084 87

Mandeville v. Canterbury, 318 U.S. 47, 63 S.Ct. 472, 87 L.Ed. 605 87

Marshall, In re, 1 U.S.D.C. Haw. 34 (1900) 168

Mason v. Smith, 162 F. 2d 336 (C.A. 9th), cert. denied 323 U.S. 747, 325 U.S. 839 142

McLeod v. Majors, 102 F. 2d 128 (C.A. 5th) 141

McNutt v. General Motors, 298 U.S. 178, 56 S.Ct. 780, 80 L.Ed. 1135 46

Michael v. Cockerell, 161 F. 2d 163 (C.A. 4th 1947) 162

Mickey v. Kansas City, 43 F. Supp. 739 (D.C.W.D. Mo. 1942) 90

Mills v. Green, 159 U.S. 651, 16 S.Ct. 132, 40 L.Ed. 293 188

Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 ....92, 105

Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 186

Murray v. Louisiana, 163 U.S. 101, 16 S.Ct. 990, 41 L.Ed. 87 ....91, 138

Musser v. Utah, 333 U.S. 95, 68 S.Ct. 397, 92 L.Ed. 562 ..... 56, 74

Napa Valley Electric Co. v. Railroad Commission, 257 Fed. 197 (D.C. Cal.) 54

Nash v. United States, 229 U.S. 373, 33 S.Ct. 780, 57 L.Ed. 1232 .. 62, 63

National Insurance Co. v. Tidewater Co., 337 U.S. 582, 69 S.Ct. 1173, 93 L.Ed. Adv. Op. 1118 50

Neal v. Delaware, 103 U.S. 370, 26 L.Ed. 567 ..... 91, 138, 148

New York v. Eno, 155 U.S. 89, 15 S.Ct. 30, 39 L.Ed. 80 91

New York Central R.R. v. United States, 212 U.S. 481, 29 S.Ct. 304, 53 L.Ed. 613 73

Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579, 79 L.Ed. 1074 .. 148, 154

Otis v. International Mercantile Marine Co., 95 F. 2d 539 (C.A. 9th) 188

Packard v. Banton, 264 U.S. 140, 44 S.Ct. 257, 68 L.Ed. 596 ..... 46, 85

Patton v. Mississippi, 332 U.S. 463, 68 S.Ct. 184, 92 L.Ed. 76 ..... 148, 152, 154

TABLE OF AUTHORITIES—Continued

Cases

Page

Pennsylvania v. Ashe, 302 U.S. 51, 58 S.Ct. 59, 82 L.Ed. 43 118
People v. Anderson, 117 Cal. App. 763, 1 P. 2d 64 80
People v. Bradley, 137 Cal. App. 225, 30 P. 2d 438 80
People v. Bundte, 87 Cal. App. 2d 735, 197 P. 2d 823, cert. denied 337 U.S. 915 ..... 64, 69, 80
People v. Dunn, 1 Cal. App. 2d 556, 36 P. 2d 1096 80
People v. Judson, 11 Daly (N.Y.) 1 58
People v. Kerrick, 86 Cal. App. 542, 261 Pac. 756 (Okla. 1927) 63
People v. Lamson, 12 F. Supp. 813, petition for leave to appeal denied 80 F. 2d 388 (C.A. 9th) 90, 105
People v. Montgomery, 47 Cal. App. 2d 1, 117 P. 2d 437 76
People v. Montoya, 17 Cal. App. 2d 547, 62 P. 2d 383 80
People v. Moore, 87 Cal. App. 2d 753, 197 P. 2d 835, cert. denied 337 U.S. 915 69
People v. Sklar, 111 Cal. App. 776, 292 Pac. 1068 ..... 61, 80
People v. Spear, 32 Cal. App. 2d 165, 89 P. 2d 445, cert. denied 308 U.S. 555 80
People v. Yuen, 32 Cal. App. 2d 151, 89 P. 2d 438, 90 P. 2d 291, cert. denied 308 U.S. 555 ..... 80, 111
Philadelphia Co. v. Stimson, 223 U.S. 605, 32 S.Ct. 340, 56 L.Ed. 570 85
Pierre v. Louisiana, 306 U.S. 354, 59 S.Ct. 536, 83 L.Ed. 757 148
Poresky, Ex parte, 290 U.S. 30, 54 S.Ct. 3, 78 L.Ed. 152 94
Priceman v. Dewey, 81 F. Supp. 557 (D.C. N.Y. 1949) 84, 177, 180
Pughe v. Patton, 21 F. Supp. 182 (D.C. Tex. 1937) 94
Pullman Co. v. Knott, 243 U.S. 447, 37 S.Ct. 428, 61 L.Ed. 841 161
Railroad Commission v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 ..... 39, 55, 74
Reid v. Brookeville, 39 F. Supp. 30 186
Republic v. Carvalho, 10 Haw. 446 81
Rescue Army v. Municipal Court, 331 U.S. 549 ..... 56, 60, 73
Rex v. Cox, 4 Car. & P. 538, 172 Eng. Rep. 815 171
Rex v. Fursey, 6 Car. & P. 80, 172 Eng. Rep. 1155 ..... 59, 172
Rex v. James, 5 Car. & P. 153 172
Richardson v. McChesney, 218 U.S. 487, 31 S.Ct. 43, 54 L.Ed. 1121 188
Ritholz v. North Carolina Board, 18 F. Supp. 409 (D.C. N.C. 1937) 54
Rosenberg v. Arrowsmith, 82 N.J. Eq. 570, 89 Atl. 524 (1914) 101

TABLE OF AUTHORITIES—Continued
Cases

Page

Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 53

Royall, Ex parte, 117 U.S. 241, 6 S.Ct. 734, 29 L.Ed. 868 92

Saia v. New York, 334 U.S. 558, 68 S.Ct. 1148, 92 L.Ed. 1574 55

Salem Mfg. Co. v. First American Fire Ins. Co., 111 F. 2d 797 (C.A. 9th 1940) 58, 63

Sanford, Ex parte, 144 Tex. Cr. App. 430, 157 S.W. 2d 899 (Tex. 1941), appeal dismissed, Sanford v. Hill, 316 U.S. 647, 62 S.Ct. 1292, 86 L.Ed. 1731 183

Saunders v. Lowry, 58 F. 2d 158 (C.A. 5th 1932) 77

Sawyer, In re, 124 U.S. 200, 8 S.Ct. 482, 31 L.Ed. 402 ..... 84, 177, 178

Screws v. United States, 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. 1495 74

Shaffer v. Howard, 249 U.S. 200, 39 S.Ct. 255, 63 L.Ed. 559 162

Sharpe v. Buchanan, 121 F. 2d 448 106

Sellers v. Johnson, 163 F. 2d 877, cert. denied 332 U.S. 851 ..... 63, 171

Skinner v. Oklahoma, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 ..... 60, 73

Smith v. Texas, 311 U.S. 128, 61 S.Ct. 164, 85 L.Ed. 84 ..... 144, 157

Snively Groves Inc. v. Florida Citrus Commission, 23 F. Supp. 600 (D.C. Fla.) 46

Snowden v. Hughes, 321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497 ..... 76, 126

Snypp v. Ohio, 70 F. 2d 535 (C.A. 6th), cert. denied 293 U.S. 563 105

Society of Good Neighbors v. Groat, 77 F. Supp. 695 (D.C. E.D. Mich. 1948) 84, 106, 177

Soga v. Jarrett, 3 U.S.D.C. Haw. 502 (1910) 168

South Porto Rico Sugar Co. v. Buscaglia, 154 F. 2d 96 75

Spector Motor Co. v. McLaughlin, 323 U.S. 101, 65 S.Ct. 152, 89 L.Ed. 101 55

Spence v. Cole, 137 F. 2d 71 ..... 84, 177

Spielman Motor Co. v. Dodge, 295 U.S. 89, 55 S.Ct. 678, 79 L.Ed. 1322 85

Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368, 69 S.Ct. 606, 93 L.Ed. Adv. Op. 579 ..... 2, 3, 46-47, 48, 56, 86, 167

State v. Butterworth, 104 N.J.L. 579, 142 Atl. 57 63

State v. Russell, 45 N.H. 83 59

State v. Weinberger, 38 F. 2d 298 (D.C. N.J.) 105

State v. Wooldridge, 129 W.Va. 448, 40 S.E. 2d 899 63

Steele v. Superior Court, 164 F. 2d 781 (C.A. 9th) 90, 91

TABLE OF AUTHORITIES—Continued

Cases

Page

Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 ..... 56, 74

Sweet v. Howard, 155 F. 2d 715 (C.A. 7th 1946) 106

Takahashi v. Fish & Game Commission, 334 U.S. 410, 68 S.Ct. 1138, 92 L.Ed. 1478 82

Taylor v. Taintor, 16 Wall. 366, 21 L.Ed. 287 176

Textile Mills Corp. v. Commissioner, 314 U.S. 326, 62 S.Ct. 272, 86 L.Ed. 249, affirming 117 F. 2d 62 (C.A. 3d 1940) 44

Terminiello v. Chicago, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. Adv. Op. 865 ..... 55, 63, 171

Territory v. Anduha, 48 F. 2d 171 125

Territory v. Armstrong, 29 Haw. 88 75

Territory v. Belliveau, 24 Haw. 768 74

Territory v. Braly, 28 Haw. 7 140

Territory v. Chong, 36 Haw. 537 175

Territory v. Hart, 35 Haw. 188 74

Territory v. Kaholokula, 37 Haw 625 ..... 4, 8, 21, 27, 54, 59, 60, 62, 70, 74, 82, 163

Territory v. Kunimoto, 37 Haw. 591 175

Territory v. Tam, 36 Haw. 32 ..... 73, 74

Thiel v. Southern Pacific Co., 328 U.S. 217, 66 S.Ct. 984, 90 L.Ed. 1181 ..... 144, 148, 158, 159

Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430 56

Thompson v. Spear, 91 F. 2d 430 (C.A. 5th 1937), cert. denied 302 U.S. 762 76

Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 ..... 55, 125

Toomer v. Witsell, 334 U.S. 385, 68 S.Ct. 1156, 92 L. Ed. 1460 ..... 46, 85, 101

Toucey v. New York Life Insurance Co., 314 U.S. 118, 62 S.Ct. 139, 86 L.Ed. 100 ..... 86, 87, 88, 90

Truax v. Raich, 239 U.S. 33, 36 S.Ct. 7, 60 L.Ed. 131 ..... 82, 87

United Electrical, R. & M. Workers v. Westinghouse Electric Corp., 65 F. Supp. 420 (D.C.E.D. Pa. 1946) 89

United Public Workers v. Mitchell, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 ..... 56, 93, 94, 138

United States v. Bower, 4 U.S.D.C. Haw. 466 (1914) 168

United States v. Brokaw, 60 F. Supp. 100 (D.C. Ill. 1945) 112

United States v. Evans, 213 U.S. 297, 29 S.Ct. 507, 53 L.Ed. 803 .. 138

United States v. Gottfried, 165 F. 2d 360 (C.A. 2d 1948), cert. denied 333 U.S. 860, rehearing denied 333 U.S. 883 158

TABLE OF AUTHORITIES—Continued

Cases

Page

United States v. Josephson, 165 F. 2d 82 (C.A. 2d 1948), cert. denied 333 U.S. 838, 335 U.S. 899 76

United States v. Local 36 of International Fishermen, 70 F. Supp. 782 (D.C.S.D. Cal. 1947) 157

United States v. Petrillo, 332 U.S. 1, 67 S.Ct. 1538, 91 L.Ed. 1877 ..... 56, 70, 74, 94

United States v. Thompson, 251 U.S. 407, 40 S.Ct. 289, 64 L.Ed. 333 111

United States ex rel Steel v. Jackson, 171 F. 2d 432 (C.A. 2d 1948) 106

Virginia v. Rives, 100 U.S. 313, 25 L.Ed. 667 ..... 91, 138

Waialua Co. v. Christian, 305 U.S. 91, 59 S.Ct. 21, 83 L.Ed. 60 173

Watson v. Buck, 313 U.S. 387, 61 S.Ct. 962, 85 L.Ed. 1416 ..... 60, 73, 185

White v. Keown, 261 Fed. 814 (D.C. Mass.) 105

Whitney v. California, 274 U.S. 357, 47 S.Ct. 641, 71 L.Ed. 1095 ..... 69, 73

Whitten v. Tomlinson, 160 U.S. 231, 16 S.Ct. 297, 40 L.Ed. 406 92

Wilentz v. Sovereign Camp, 306 U.S. 573, 59 S.Ct. 709, 83 L.Ed. 994 3

Wilder v. Reno, 43 F. Supp. 727 (D.C. Pa. 1942) 94

Williams v. New York, 337 U.S. 241, 69 S.Ct. 1079, 93 L.Ed. Adv. Op. 1005 99

Winters v. New York, 333 U.S. 507, 68 S.Ct. 665, 92 L.Ed. 840 ..... 55, 71

Wong Yim v. United States, 118 F. 2d 667 (C.A. 9th 1941), cert. denied 313 U.S. 589 157

Yerian, In re, 35 Haw. 855, affirmed 130 F. 2d 786 75

Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 ..... 76, 77

Young, Ex parte, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 ..... 84, 176

Young v. Sanford, 147 F. 2d 1007 (C.A. 5th 1945), cert. denied 325 U.S. 886 ..... 108, 161

Young v. Territory, 160 F. 2d 289 (C.A. 9th 1947), cert. denied 331 U.S. 849 ..... 174, 179

Zimmerman v. Maryland, 336 U.S. 901, 69 S.Ct. 469, 93 L.Ed. 425 157

Statutes and Rules

Page

Constitution of the United States:

Amendment I 6
Amendment V 6, 13, 75, 135
Amendment VI 6, 135
Amendment VIII 25
Amendment XIII 49
Amendment XIV 6, 13, 49, 75, 135, 147-148
Amendment XIX 6, 135

Civil Rights Act:

8 U.S.C. 41 ..... 5, 49
8 U.S.C. 43 ..... 5, 49, 89, 138, 139
8 U.S.C. 44, sec. 243 of Revised Title 18 ..... 5, 49, 146
8 U.S.C. 46 ..... 5, 49
8 U.S.C. 47 166
8 U.S.C. 49a, formerly 28 U.S.C. 729 88

Judicial Code:

Sec. 1 of old code, 28 U.S.C. 1, sec. 132 of revised Title 28 .. 44
Sec. 24 (1) of old code, 28 U.S.C. 41 (1), sec. 1331 of revised Title 28 5
Sec. 24 (8) of old code, 28 U.S.C. 41 (8), sec. 1337 of revised Title 28 ..... 48, 51
Sec. 24 (14) of old code, 28 U.S.C. 41 (14), sec. 1343 of revised Title 28 ..... 5, 45, 96, 165, 138
Sec. 31 of old code, 28 U.S.C. 74, sec. 1443 of revised Title 28 ..... 90, 181, 182
Sec. 37 of old code, 28 U.S.C. 80, sec. 1359 of revised Title 28 ..... 46, 179
Sec. 128 of old code, 28 U.S.C. 225 (a), sec. 1293 of revised Title 28 172
Sec. 265 of old code, 28 U.S.C. 379, sec. 2283 of revised Title 28, (enacted by Act of March 2, 1793, 1 Stat. 334, c. 22, sec. 5; Revised Statute, s. 720) 40, 47, 86, 87, 88, 89, 107, 166, 138
Sec. 266 of old code, 28 U.S.C. 380, secs. 1253, 2281 and 2284 of revised Title 28 ..... 2, 6, 43

Federal Rules of Civil Procedure:

Rule 15 (d) 188
Rule 75 (h) 45

Labor-Management Relations Act 1947, 61 Stat. 136, 29 U.S.C. Supp. 141 et seq 21, 51, 97, 98, 99, 102, 184

National Labor Relations Act (49 Stat. 449, c. 372) 51, 97, 98

Naturalization laws, 8 U.S.C. 703, 724 153

Norris-La Guardia Act, 29 U.S.C. 108, 113 102

Rules of Decisions Act, 28 U.S.C. 725, now section 1652 54

Statutes and Rules—Continued

Page

Hawaiian Organic Act:
- Sec. 6 ..... 169, 175
- Sec. 7 169
- Sec. 55, as amended by Act of July 9, 1921 116
- Sec. 76 111
- Sec. 83 ..... 135, 146, 160
- Sec. 86 167

Hawaiian Constitution of 1852 170

Conspiracy Statute, chapter 243, Revised Laws of Hawaii 1945 (Appendix IV) 72, 195-198
- Sec. 11120 ..... 72, 73

Unlawful Assembly and Riot Act, chapter 277, Revised Laws of Hawaii 1945 (Appendix II) 188-192
- Sec. 11570 ..... 59, 65
- Secs. 11571-11575 ..... 58, 59
- Sec. 11572 64
- Sec. 11573 66
- Sec. 11574 64
- Sec. 11575 65
- Secs. 11576-11577 59
- Secs. 11578-11580 59
- Secs. 11581-11584 59

Revised Laws of Hawaii 1945 (other provisions):
- Sec. 1501 80
- Sec. 1502 80
- Sec. 6266 ..... 79, 80
- Sec. 6271 80
- Sec. 6528 80
- Sec. 6615 80
- Sec. 3963 174
- Sec. 9531 4
- Sec. 9564 175
- Sec. 9638 187
- Sec. 9791 ..... 135, 149
- Sec. 9800 149
- Sec. 9802 187
- Sec. 9812 ..... 135, 137
- Sec. 10610 60
- Sec. 10670 65
- Sec. 10735 128
- Sec. 10804 72
- Sec. 10830 111-112
- Sec. 10842 174
- Sec. 10843 174
- Sec. 11063 82
- Sec. 11103 130

Statutes and Rules—Continued

Page

Session Laws of Hawaii:
- Act 4 of the Session Laws of 1929, amending the Unlawful Assembly and Riot Act 170
- Act 99 of the Session Laws of 1935, amending the Conspiracy Statute 175
- Act 199 of the Session Laws of Hawaii 1947, amending the indeterminate sentence law 174
- Act 62 of the Session Laws of Hawaii 1949, amending the Unlawful Assembly and Riot Act (Appendix III) 52, 192-195
- Act 10 of the Special Session Laws of Hawaii 1949, amending the Conspiracy Statute (Appendix V) 71, 198-200

Arkansas, Act 193, Acts of 1943 67
Arizona, statutes relating to riots (Appendix VI) 59, 201-202
California, statutes relating to riots (Appendix VI) 59, 202-204
Idaho, statutes relating to riots (Appendix VI) 59, 204-206
Montana, statutes relating to riots (Appendix VI) 59, 206-207
Nevada, statutes relating to riots (Appendix VI) 59, 208-209
North Dakota, Revised Code 1943, sec. 12-1904 118
Oregon, statutes relating to riots (Appendix VI) 59, 118, 209-211
South Dakota Code of 1939, sec. 13-404 118
Washington, statutes relating to riots (Appendix VI) 59, 211-213

Other Authorities

Page

Textbooks:
- Adams, Interracial Marriage in Hawaii, pp. 119-120 ..... 117, 147
- Alexander's Brief History of the Hawaiian People 170
- Blackstone's Commentaries, Book IV, pp. 142-143 58
- Blackstone's Commentaries, Book IV, p. 146 ..... 58, 171
- Burrows, Hawaiian Americans, pp. 208-209 117
- Chaffee's Free Speech in the United States 71
- 1 High on Injunctions, 4th Ed., sec. 68 at pp. 87-88 85
- Lind, An Island Community, pp. 245, 273-274 117
- 1 Sutherland Statutory Construction, 3d ed., sec. 1937 70
- 2 Sutherland Statutory Construction, 3d ed., sec. 5207 167
- 2 Wharton's Criminal Law, 12th ed., sec. 1863 64

Other Authorities—Continued

Page

Articles and Encyclopedia:

52 A.L.R. 919 139
24 Am. & Eng. Encyc. of Law, 2d Ed., p. 976 59
11 Am. Jur. 840, sec. 153 ..... 60, 73
20 Am. Jur. 50, sec. 19 114
24 Am. Jur. Grand Jury, sec. 30, p. 854 139
42 Am. Jur. 241, sec. 10 119
19 B.U.L.R. 413 139
18 C.J. 1336, sec. 79 119
66 C.J. 39, sec. 7 171
27 C.J.S. 433, sec. 28b 119
38 C.J.S. 1014, sec. 25, Grand Juries 139
7 F.R.D. 271 129
42 Harv.L.R. 265, 269 170
43 Harv.L.R. 375 86
50 Harv.L.R. 583, 597 131
57 Harv.L.R. 269, 293 114
41 Yale L.J. 293, 296-297 129
42 Yale L.J. 1169, 1191 86

Government documents and reports:

Declarations and Resolves of the First Continental Congress, Oct. 14, 1774 172
Sessions of First Congress, House of Representatives, pp. 434, 732-733 172
33 Cong. Rec. (relating to Hawaiian Organic Act) 168
Sen. Doc. No. 16, 55th Cong., 3d Sess. (relating to Hawaiian Organic Act) 168, 169
H.R. Rep. No. 305, 56th Cong., 1st Sess. (relating to Hawaiian Organic Act) 168, 169
Joint Committee on Labor-Management Relations, Report on the West Coast Maritime Industry, Sen. Rep. 986, part 5, 80th Cong., 2d Sess. 114, 115
United States Department of Labor, Bulletin No. 926, "The Economy of Hawaii in 1947" 114
Statehood hearings, 1946, pursuant to H.R. Res. 236, 79th Cong., 2d Sess. 113
Statehood hearings, 1948, on H.R. 49, 80th Cong., 2d Sess., in the Senate (Senator Cordon's report) 115
94 Cong. Rec. pp. 6313-6330 (relating to statehood hearings) 115
95 Cong. Rec. No. 112, p. 8328 (relating to statehood, Senator Butler's report) 115

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, and JEAN LANE, individually and as Chief of Police of the County of Maui, *Appellants,* vs. INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a Voluntary Unincorporated Association and Labor Union, et al., *Appellees.*	No. 12300
WALTER D. ACKERMAN, JR., individually and as Attorney General of the Territory of Hawaii, *Appellant,* vs. INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, a Voluntary Unincorporated Association and Labor Union, et al., *Appellees.*	No. 12301

APPELLANTS' OPENING BRIEF

JURISDICTIONAL STATEMENT

These are appeals pursuant to section 1291 of the new judicial code from final decisions of the United States District Court for the District of Hawaii, made and entered March 29, 1949, in two cases, Civil No. 828 in that court which in this Court is No. 12300 (decree, R. 543-550),[1]

[1] Unless otherwise indicated, references to the record are to the record in No. 12300, or to the consolidated record in Nos. 12300-12301, the paging of which follows consecutively the paging in volume I of the record in No. 12300. Where the reference is to volume I of the record in No. 12301 (which for that case precedes the consolidated record) the reference used is as follows: "No. 12301, R. ....."

and Civil No. 836 in that court which in this Court is No. 12301 (decree, No. 12301, R. 89-96).[1] The notices of appeal were filed April 26, 1949 (R. 550-551; No. 12301, R. 97), pursuant to section 2107 of the new judicial code.

The actions were brought by the respondents to obtain (R. 2-24, 104-106, No. 12301, R. 2-34), and the respondents did obtain (R. 543-550; No. 12301, R. 89-96), injunctions against the continuance of four criminal prosecutions then pending in the circuit court of the Territory of Hawaii, Second Judicial Circuit, one for riot and conspiracy, Criminal No. 2365 (No. 12301, R. 28), and three for riot, Criminal No. 2412 (R. 88), Criminal No. 2413 (R. 93), and Criminal No. 2419 (R. 138). The district court held that it acted as a specially constituted statutory three-judge court under sections 2281 and 2284 of the new judicial code (formerly judicial code section 266, 28 U.S.C. 380) "or in the alternative, if these provisions be inapplicable in the United States district court for the district of Hawaii, then as the United States district court for the district of Hawaii comprised of three judges sitting en banc." (Decree, R. 546, No. 12301, R. 93; opinion, R. 413-439, 82 F. Supp. 65, 86).

Inherent in the question of the jurisdiction of this Court is the question whether the district court was a specially constituted statutory three-judge court, whose decrees should be directly appealed to the Supreme Court of the United States pursuant to section 1253 of the new judicial code. That the district court was not a statutory three-judge court, that section 1253 does not apply, and that this Court has appellate jurisdiction appears from the opinion of the Supreme Court of the United States in *Stainback* v. *Mo Hock Ke Lok Po*, 336 U.S. 368, 377-381, decided March 14, 1949 after the opinion was rendered in these cases. The Supreme Court held Congress did not intend that the burden placed on the functioning of the federal judicial system by the three-judge court provisions should be under-

taken where enactments of a territorial legislature were involved.

Since a statutory three-judge court was not properly called for the district of Hawaii, there is no direct appeal to the Supreme Court of the United States and the usual appeal lies to this Court. *Stainback* v. *Mo Hock Ke Lok Po, supra; Healy* v. *Ratta,* 289 U.S. 701, 292 U.S. 263, 264, 67 F. 2d 554, 556; *Wilentz* v. *Sovereign Camp,* 306 U.S. 573, 582; *Commission* v. *Brashear Lines,* 312 U.S. 621, 626.

STATEMENT OF THE CASE

A. No. 12301

This case was commenced December 31, 1947, four weeks after No. 12300, but because No. 12301 arose first in point of time in the territorial courts, the subject matter thereof will be set forth first.

Proceedings in territorial courts. On October 16, 1946, at Paia, Island of Maui, County of Maui, Territory of Hawaii, during the sugar strike of September 1-November 19, 1946,[2] occurred the incident which occasioned in the circuit court of the Second Judicial Circuit of the Territory of Hawaii[3] a criminal prosecution, Criminal No. 2365. A complaint was sworn to on October 19, 1946 (R. 1282), followed by arrests. On October 30, 1946, the territorial grand jury for the Second Judicial Circuit returned an indictment for riot and unlawful assembly, a felony, against seventy-eight persons (R. 1240-1247). These seventy-eight persons, seventy-four of whom were plaintiffs in the court below, represented by Mrs. Harriet Bouslog, their attorney, and also their attorney in the court below, filed a plea to this indictment, entitled "Demurrer or Motion to Quash."

[2] The strike continued at one company, Pioneer Mill Company, Lahaina, until January 2, 1947 (R. 391, note 15).

[3] The Second Judicial Circuit is coincident with the County of Maui.

The plea was overruled, and pursuant to section 9531 of the Revised Laws of Hawaii 1945 Circuit Judge Cable Wirtz permitted an interlocutory appeal from his ruling to the Supreme Court of Hawaii. The case was submitted in that court on October 28, 1947 and decided November 26, 1947, being the case of *Territory* v. *Kaholokula,* 37 Haw. 625. In an opinion by Mr. Justice Peters the Supreme Court construed the criminal statute and upheld its constitutionality. The court further held that all three counts of the indictment were fatally defective in form, for failure to specify the particulars of the conduct which struck or tended to strike terror into others. "Acts which strike or tend to strike terror into others are essential ingredients of the offense of riot," said the Supreme Court (37 Haw. at p. 642).

On December 2, 1947, the territorial grand jury for the Second Judicial Circuit returned a second indictment in Criminal No. 2365 against seventy-four of the original defendants, plus one other, Masao Sera (No. 12301, R. 28-34). The indictment contained two counts, a first count for riot, and a second count for conspiracy, third degree. The count for riot differed from the earlier indictment, found fatally defective by the Supreme Court, in that it was specified that there were assaults against the victims of the riot, and the nature thereof. It was charged in the second count for conspiracy, third degree, that these seventy-five persons conspired to commit acts of violence against and inflict corporal injuries upon the said victims. Thus this second count charged conspiracy to commit criminal offenses (R. 401).

The first indictment was returned by the 1946 grand jury and the second indictment by the 1947 grand jury. Neither has been challenged by the defendants in Criminal No. 2365, individual plaintiff-appellees in No. 12301, and there has been no plea to the second indictment. There

was a challenge to the 1947 grand jury presented by the defendants in Criminal Nos. 2412, 2413, and 2419, individual plaintiff-appellees in No. 12300; by the complaint in No. 12301 plaintiffs endeavored to adopt and incorporate this other record and have it reviewed by the court below (No. 12301, R. 20-22).

Proceedings in the court below; parties. On December 31, 1947, the complaint in No. 12301, Civil 836 in the court below, was filed in the United States district court for the district of Hawaii, by the seventy-five defendants in Criminal No. 2365, seventy-four of whom had already obtained an adjudication of the constitutionality of the riot statute by the Supreme Court of Hawaii, as above stated. Added plaintiffs were the International Longshoremen's and Warehousemen's Union (hereinafter called the Union or the ILWU) and Antonia T. Rania, president of ILWU Local 142 (United Sugar Workers) suing as a class representative. The defendants were the Attorney General, appellant herein; the then County Attorney and Deputy County Attorney who though no longer in office when the decree was entered the court refused to dismiss[4] and who also have appealed to this Court (R. 551; No. 12301, R. 97); and the Governor, Judge of the second judicial circuit of the Territory, Jury commissioners, and members of the 1947 territorial grand jury for the second judicial circuit, who were dismissed by the court below at the end of the case (R. 515-517, 547; No. 12301, R. 93-94).

Same; plaintiffs' complaint. The jurisdiction of the United States district court was alleged to be founded on the Civil Rights Act, cited in the complaint as 8 United States Code sections 41, 43, 44 and 46; sections 24 (1) and 24 (14) of the old judicial code, cited in the complaint as 28 United States Code sections 41 (1) and 41 (14); and

[4] Point XII, *infra*.

Amendments I, V, VI, XIV and XIX of the Constitution of the United States. A three-judge court was requested and section 266 of the old judicial code was invoked (No. 12301, R. 10). The complaint attacked as contrary to the Constitution and statutes of the United States, the unlawful assembly and riot statute and the conspiracy statute of the Territory, and attacked the legality of the 1947 territorial second circuit grand jury, as constituted (No. 12301, R. 13-20). It prayed that the court so adjudicate, and that the attorney general, and county attorney and his deputy, be enjoined from proceeding further in connection with the pending indictment (No. 12301, R. 25-26).

This matter is continued under part C, *infra*.

B. No. 12300

This case was commenced December 1, 1947.

Proceedings in territorial courts. On July 14, 1947, at Kaumalapau Wharf, Island of Lanai, County of Maui, during the pineapple strike of July 10-July 15, 1947, occurred the incident which occasioned two criminal prosecutions, Criminal Nos. 2413 and 2419. This incident is referred to by the court below as one of the Lanai incidents, but as there are two incidents on Lanai, this one and the Kalua incident of July 15, 1947 involved in Criminal No. 2412, it will be more convenient to refer to this one as the Kaumalapau Wharf incident. All three criminal complaints, Criminal Nos. 2413, 2419, and 2412, charged acts of beating, striking, and infliction of corporal injuries upon persons therein named (R. 93-94, 139-140, 88).

As a result of the Kaumalapau Wharf incident eleven persons were committed by the district court of Lanai to the circuit court of the second judicial circuit of the Territory of Hawaii, Criminal No. 2413. They were committed to await the action of the grand jury on a criminal com-

plaint made July 16, 1947, they having waived preliminary examination (R. 93-97). This criminal complaint is the same as exhibit D attached to the complaint herein (R. 22-23). In Criminal No. 2419, also based on the Kaumalapau Wharf incident, the complaint was made and warrants were issued on August 1, 1949. After a preliminary hearing on August 22, 28, 29, and 30, the Lanai district court took the matter under advisement and on September 16, 1947, the thirty-six persons who are plaintiffs in the present case were committed for grand jury action (R. 138-323). This Criminal No. 2419 was not included in the original complaint below, but was added to it by stipulation (R. 104-106).

On July 15, 1947, the day after the Kaumalapau Wharf incident, there occurred, also on the Island of Lanai, the incident which occasioned Criminal No. 2412, referred to as the Kalua incident. As a result of the Kalua incident five persons were committed by the district court of Lanai to the circuit court of the second judicial circuit, Criminal No. 2412. They were committed to await the action of the grand jury, after having waived preliminary examination (R. 88-93). The criminal complaint was made July 15, 1947 and is the same as exhibit E attached to the complaint herein (R. 23-24).

The defendants in Criminal Nos. 2412 and 2413, plaintiffs below, on July 29, 1947, filed challenges to the grand jury of the second judicial circuit,[5] which were heard by a substitute judge, the Honorable A. M. Cristy, the second circuit judge having disqualified himself by reason of being

[5] The defendants in Criminal No. 2419, plaintiffs below, had not been committed for grand jury action when the challenges were heard, but as they were involved in the same incident as those in Criminal No. 2413 and their cases were before the district magistrate's court for commitment, it was anticipated when the challenges were heard that they would join in the challenges, and it was stipulated in the court below that they may be deemed to have done so (R. 339, par. 6).

a jury commissioner; on September 18, 1947, after a considerable hearing these challenges were denied (R. 59-87, 567-1082).

At the time when the grand jury challenges were disposed of the unlawful assembly and riot statute was before the Supreme Court of Hawaii in the *Kaholokula* case involved in No. 12301. Therefore Criminal Nos. 2412, 2413 and 2419 were held awaiting the opinion of the court, which as above noted was given on November 26, 1947, upholding the constitutionality of the statute. These cases were to come before the grand jury on December 2, 1947. On December 1, 1947 at 7:00 p.m. for the purpose of preventing the grand jury from proceeding at 9:00 a.m. the following morning, there was issued an ex parte temporary restraining order on the grounds of alleged illegal composition of the grand jury and alleged invalidity of the unlawful assembly and riot statute; this ex parte order was issued on a complaint and affidavit plainly showing that the grand jury issues had been adjudicated by the parties concerned and the Unlawful Assembly and Riot Act had been upheld by the Supreme Court of Hawaii in the *Kaholokula* case (R. 11, 24, 26-29). By reason of the temporary restraining order preventing the grand jury from acting before it went out of office (R. 1085-1096) the grand jury issue became moot (see paragraph 4 of the decree, R. 547).

Proceedings in the court below; parties. On December 1, 1947, the complaint in No. 12300 was filed in the United States district court for the district of Hawaii by the eleven defendants in Criminal No. 2413 and the five defendants in Criminal No. 2412. The thirty-six defendants in Criminal No. 2419 became parties by stipulation (R. 104-106). Added plaintiffs were the ILWU and Jack Kawano, suing as a class representative. The defendants were the same

as in No. 12301, except that Jean Lane, chief of police of the County of Maui, also was made a party defendant and is an appellant here.

Same; plaintiffs' complaint. The complaint, in its attack upon the Unlawful Assembly and Riot Act, was similar to that in No. 12301, being founded upon the same provisions of the Constitution and laws of the United States (R. 7, 11-14, 19-20). The complaint did not attack the conspiracy statute. As previously noted the complaint also attacked the grand jury, but this part of the case has become moot.

This matter is continued under part C.

C. Nos. 12300 and 12301

Defendants' motions in the court below. From the inception of the cases defendants attacked:

(a) The jurisdiction of the court over the subject matter and the maintenance of a federal equity suit as a means of quashing pending criminal charges in the territorial court (No. 12300: motion to dissolve temporary restraining order, R. 35-42, parts I, II and part III, paragraphs 1-3; motion to dismiss and for summary judgment, R. 113-115, 119, part III, and part IV, paragraphs 1-5, incorporated by reference in part V; No. 12301: Return to Order to Show Cause, R. 39-40, parts I and II; motion to dismiss and for summary judgment, R. 57-59, part III and part IV, paragraphs 1-5);

(b) The insufficiency of the complaint to show deprivation of civil rights (No. 12300: motion to dissolve temporary restraining order, R. 41, part XI, paragraphs 2 and 3; motion to dismiss and for summary judgment, R. 116-117, 119, part IV, paragraphs 10 and 11, part V, paragraphs 10 and 11; No. 12301: return to order to show cause, R. 45, part XII; motion to dismiss and for summary judgment, R. 60, part IV, paragraphs 10 and 11);

(c) The joinder in the case of the union and its membership suing by class representative, when the complaint presented no justiciable controversy as to them (No. 12300: motion to dissolve temporary restraining order, R. 37, part III, paragraphs 4 and 5; motion to dismiss and for summary judgment, R. 124-125, part VI, paragraphs 5-8; No. 12301: return to order to show cause, R. 46, part XVI; motion to dismiss and for summary judgment, R. 62-63, part V, paragraphs 5-9) ;

(d) The failure of the plaintiffs to come into equity with clean hands (No. 12300: motion to dismiss and for summary judgment, R. 116, 119, 125, part IV, paragraph 9, part V, paragraph 9, part VI, paragraph 8; No. 12301: motion to dismiss and for summary judgment, R. 60, 62, part IV, paragraph 9, part V, paragraph 8) ;

(e) The relitigation in the United States district court, a court having no appellate jurisdiction, of the constitutionality of the riot statute, already litigated in Criminal No. 2365 and upheld by the Supreme Court of Hawaii (No. 12301: return to order to show cause, R. 43-44, parts IX and X; motion to dismiss and for summary judgment, R. 59-60, part IV, paragraphs 6 and 7) ;

(f) The making of a collateral attack on the composition of the territorial grand jury in lieu of a challenge or plea in the criminal proceeding itself with appellate review thereafter (No. 12300: motion to dissolve temporary restraining order, R. 38-40, parts IV-VIII; motion to dismiss and for summary judgment, R. 126-128, parts VII and VIII; No. 12301: return to order to show cause, R. 41-42, paragraphs III and IV; motion to dismiss and for summary judgment, No. 12301, R. 64-66, part VI, paragraphs 1-12) ;

(g) Defendants further asserted the constitutionality of the riot and conspiracy statutes and the legality of the 1947 territorial second circuit grand jury as constituted (No.

12300: motion to dissolve temporary restraining order, R. 41, part XI, paragraph 1, motion to dismiss and for summary judgment, R. 117, 120, 125, part IV, paragraphs 12 and 13, part V, paragraphs 12 and 13, part VI, paragraphs 9 and 10; No. 12301: return to order to show cause, R. 44, part XI; motion to dismiss and for summary judgment, R. 60, 63, 66-67, part IV, paragraph 12, part V, paragraphs 10 and 11, part VI, paragraph 14).

Disposition of defendants' motions in the court below. Defendants' objections, stated in each case as grounds against the issuance of a temporary restraining order and in their motions, as above stated, were denied, the objections to the temporary restraining order being denied in No. 12300 on December 10, 1947 (R. 99-103, 1083-1097) and in No. 12301 on January 6, 1948 (No. 12301, R. 49-52), and the motions in both cases being denied on April 19, 1948 (R. 335-337, 1107-1108). No reasons for denial of these objections and motions were stated at the time, except that the United States district judge for the district of Hawaii on December 10, 1947, in connection with the temporary restraining order first issued (No. 12300) after argument of the motion to dissolve the order, said that there were difficult and important matters involved and it might be that the quickest way to get them settled by the Supreme Court of the United States would be through a three-judge court (R. 1084-1085). After plaintiffs had presented their direct case defendants renewed their motions to dismiss, which matter was reserved for later disposition, and denied by the decrees (R. 1570, 545, 548, No. 12301, R. 92, 95).

In its opinion the court below reconsidered defendants' motions to dismiss and devoted a portion of its opinion to the question of its authority to enjoin criminal prosecutions, again denying the motions (R. 467-486, 545, 548; No. 12301, R. 92, 95).

Proceedings after denial of defendants' motions. After denial of defendants' motions on April 19, 1948, the court and counsel discussed the further proceedings, and plaintiffs elected to go forward with the hearing on the application for a permanent injunction (R. 1110, 1128). Little time was available by reason of the commitments of the judges for sessions elsewhere (R. 1116). The court suggested ways and means of shortening the proceedings (R. 1109-1118) as a result of which certain matters were stipulated (R. 337-342; No. 12301, R. 80-84) and all matters not stipulated were denied (R. 343; No. 12301, R. 84) plaintiffs waiving any objection to the employment of a general denial in each answer (R. 1129). Transcripts of other hearings were used by stipulation, as were certain documents (R. 339-342, paragraphs 7-12; No. 12301, R. 82-84, paragraphs 7-10), but defendants only waived the hearsay objection and preserved objections to the entire line of evidence concerning the composition of the grand jury (R. 1129-1132, 1133, 1370, 1518); the court denied these objections together with other objections to evidence, hereinbelow specified (R. 545, 548; No. 12301, R. 91-92, 94). Trial of the case commenced on April 23, 1948, and was concluded on May 1, 1948 (R. 353, 364-365).

Decrees. The court granted injunctions restraining the defendants from proceeding further with the pending prosecutions under the unlawful assembly and riot statute or the conspiracy statute, on the ground of unconstitutionality of those statutes (No. 12300: R. 548, paragraphs 11, 12 and 13; No. 12301: R. 95-96, paragraph 11). In No. 12301 the court also held void the indictment returned December 2, 1947, on the ground that the grand jury was illegally constituted.

There was no injunction against subsequent prosecutions and, as we will show, there was no foundation for any such injunction in the complaints.

D. Questions of fact raised by the pleadings.

Aside from the formal allegations concerning the pendency of the criminal proceedings and the nature and capacity of the parties, which were stipulated to (R. 337-339, paragraphs 1-5; No. 12301, R. 80-82, paragraphs 1-6) the only allegations of fact contained in the complaints were as follows:

The question of peaceful picketing. The complaints alleged the pendency of the criminal prosecutions, hereinabove set forth, and appended the criminal complaints involved in No. 12300 and the indictment involved in No. 12301, all of which charged acts of force and violence as above set forth. In each case, in the motion for more definite statement and as part of the motion to dismiss, it was objected that the pleadings failed to show that plaintiffs were peacefully picketing during the occurrence of the events alleged in the criminal complaints and indictment, respectively,[6] and failed to show that plaintiffs were guilt-

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[6] After referring to the pending criminal proceedings the charges in which were appended to the complaints and as above noted averred acts of force and violence, the complaints alleged that the criminal statutes "if enforced against plaintiffs as defendants threaten to do herein, will deprive plaintiffs of their liberty and property without due process of law, in that plaintiffs will be prohibited from exercising their rights of free speech, press and assemblage in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States." (R. 11-12, paragraph XIV, subparagraph (2); No. 12301, R. 13-14, paragraph XI, subparagraph (2).)

In No. 12300, the complaint alleged: "That from July 10, 1947, to and including July 15, 1947, a labor dispute existed in the Territory of Hawaii in which the disputants involved were the plaintiffs herein in part and the Hawaiian pineapple industry." After alleging that the plaintiffs were on strike the complaint continued: "That in connection with publicizing the facts of said labor dispute the plaintiffs herein *during said times* did engage in certain lawful, peaceful and constitutionally protected activities of speech, press and assemblage and of peaceful picketing." (R. 9, paragraph VIII, italics added.) The complaint in No. 12301 was similar (No. 12301, R. 12, paragraph VIII).

less of wrongful conduct, or that they came into equity with clean hands (R. 110-111, 116, 119; part I, paragraph 1, part IV, paragraphs 9 and 10, part V, paragraphs 9 and 10; No. 12301, R. 54-55, 60, part I, paragraph 1, and part IV, paragraphs 9 and 10). These motions, with the other motions, were denied without statement of reasons.

The defendants then answered describing the occurrences and averring that the same did not constitute lawful, peaceful or constitutionally protected activities of free speech or press, peaceful assemblage, or peaceful picketing (R. 343-346, paragraphs II and III; No. 12301, R. 85-86, paragraph II). The court's findings, summarized under the next heading "Facts in the territorial criminal cases," amply support defendants' contention that in each of the occurrences there was deliberate use of mass force and violence, and that in each of the occurrences there was a bright line, easily discernable, between peaceful picketing and the criminal incident itself. The court held that "we do not condone or attempt in any manner to palliate the illegal conduct of the strikers, plaintiffs in these proceedings" (R. 485). But the court held it to be irrelevant that the conduct was illegal.

The court below manifested complete misunderstanding of the difference between, on the one hand, defending a criminal prosecution in the criminal courts, where the defendants, no matter how guilty of unlawful conduct, can only be convicted of the particular charges brought against them under a constitutional law, and, on the other hand, resort to an equity suit where the purpose of the suit is and can only be to protect, promote and further peaceful activities threatened with interference. We shall endeavor in the argument to develop this distinction.

The question of denial of equal protection. The complaints, in paragraphs XIV and XI respectively, after re-

ferring to the pending criminal proceedings alleged that the statutes were violative of plaintiffs' civil rights and the constitution:

> "(6) In that plaintiffs are forbidden the rights, privileges and immunities of speech, press and assemblage in publicizing the facts of the labor dispute above referred to while the same prohibition is not applied or enforced against the other disputants in the said strike situation, namely, the employer group, or to other groups in the community." (R. 11-13, paragraph XIV, subparagraph (6); No. 12301, R. 13-15, paragraph XI, subparagraph (6).)

This matter is argued in point V, *infra*.

The question of jurisdictional amount. Paragraph XVIII of the complaint in No. 12300, as amended (R. 32) and paragraph XXI of the complaint in No. 12301 (No. 12301, R. 24) contain allegations intended to support the jurisdictional amount of $3000, discussed below in that connection (point II, *infra*).

The question of the grand jury. This matter, moot in No. 12300 but considered by the court below in No. 12301 over defendants' objections, is developed in another part of this brief (point XI).

E. Questions of fact not raised by the pleadings.

The question of good faith. The court announced in its opinion that a major issue in the cases was the good faith of the prosecutions (R. 412). The court held that where injunction suits are brought under the Civil Rights Act attacking criminal prosecutions pending against members of labor unions for the use of force and violence in labor disputes, the motive of the prosecutor is in issue, though concededly not so in the ordinary criminal proceeding, and the court identified the motive of the prosecutor with

the good faith of the prosecution (R. 480). We will show from adjudicated cases (point IX, *infra*) that lack of good faith of the prosecution, while frequently asserted, never has been deemed a ground for intervention in pending criminal cases, where such facts can be tried as well as others. But at this point we will confine ourselves to review of the pleadings.

Oppression and intimidation by the prosecution were the substance of the court's findings of lack of good faith. The constituent facts were not pleaded. Plaintiffs' counsel was well aware that for contentions of oppression and intimidation to be considered at all, the constituent facts must be pleaded. The same counsel appeared in *Alesna* v. *Rice,* 74 F. Supp. 865, decided four weeks before the complaint in No. 12301 was filed. In that case the United States district court for the district of Hawaii had pointed out the inadequacy of the complaint to sustain the contentions listed at page 872 of 74 F. Supp. and similar to the matters which the court below injected into these cases in its opinion. In the *Alesna* case the complaint had alleged oppression and intimidation (Record No. 11872 in this Court, page 16); the United States district court said that the complaint's allegations "do not support plaintiffs' argument that a conspiracy to deny plaintiffs their rights and to single them out for prosecution in order to intimidate others has been alleged in the complaint" (74 F. Supp. at p. 876). In the face of this holding plaintiffs filed the same type of pleading in No. 12301. It is manifest that plaintiffs had no intention of presenting an *issue of fact* as to the good faith of the prosecution but on the contrary intended to present an *issue of law* that the statutes were intimidating.

In the *Alesna* case, this Court upon appeal from the above cited decision of the United States district court for the district of Hawaii treated the contention of intimidation as an issue of law, holding that it presented no rea-

son why the contempt case there involved should not proceed in the criminal court (172 F. 2d 176 at p. 177). In a previous paragraph of the opinion this Court remarked that the *Alesna* complaint "alleges no conspiracy or wrongful connection between the prosecution and the employer, as in *Hague* v. *C.I.O.*, 307 U.S. 496, 59 S. Ct. 954, 83 L. Ed. 1423, where the defendant officers, under the pretense of enforcing an unconstitutional ordinance, forcibly deported the charged and other persons without trial beyond the city limits. Nor does the complaint allege any of the facts which the decision of the district court of Hawaii found exceptional in *International Longshoremen's Union* v. *Ackerman*, 82 F. Supp. 65" (referring to the present cases). Of course, this Court did not have before it, as it does now, the record in the present cases, hence did not then know that in these cases, as in the *Alesna* case, no facts to show lack of good faith of the prosecution were pleaded.

The question of impact of the statutes on labor relations. The court went extensively into the impact of the Unlawful Assembly and Riot Act and the conspiracy statute on labor relations (R. 477-479, continued at R. 483). But the complaint in each case only alleged the value of the right of peaceful picketing, in the paragraph relating to jurisdictional amount (R. 33, amended paragraph XVIII; No. 12301, R. 24, paragraph XXI). This was not backed up by any case alleged under any labor relations act or other act relating to commerce (point II-B, *infra*). No justiciable controversy was stated by the union or the class representatives (point VII, *infra*).

STATEMENT OF THE CASE, CONTINUED; FACTS IN THE TERRITORIAL CRIMINAL CASES

The facts as to the three occurrences out of which arose the four pending territorial criminal cases are found by the court in the following portions of the opinion:

Criminal No. 2365, Paia incident, involved in No. 12301, R. 391-395; **Criminal Nos. 2413 and 2419,** Kaumalapau Wharf incident, involved in No. 12300, R. 402-405; **Criminal No. 2412,** Kalua incident, involved in No. 12300, R. 408.

It will be observed that each of the incidents involves the deliberate, planned use of mass force and violence to attain an objective of the strikers, i.e., to stop work from going on. In no instance was there a mere fracas on a picket line, arising from a sudden flare-up of animus. In each incident there is a clear bright line demarking peaceful picketing from what occurred. This appears as follows:

In the Paia incident the men left the picket line and massed to meet the police and the men seeking entry to the mill when the mill whistle blew (R. 393). The strikers had been alerted the day before, when Moniz tried to go to work but could not get through the picket line, and Moniz announced he would return the following day, the day of the incident. On the very day when the union was so forewarned (the day previous to the incident) there arrived from Honolulu one Kealoha, not an employee of the plantation where the incident occurred but a special agent of the ILWU (opinion, R. 393, footnote 17), who proceeded to inform Assistant Chief of Police Freitas "that he had been to the mainland and he had seen a lot of bloodshed" (R. 1646). Joseph Kaholokula who headed the group that talked the matter over with the police on the morning of the incident, before the men tried to go to work, and who informed the police that if the men tried to go to work there would be violence and bloodshed (see findings, R. 393) was president of Local 144, the ILWU local for Maui of pineapple, sugar and longshore workers at that time (R. 1237). Benjamin Awana, one of those specifically mentioned in the court's findings, was secretary of Local 144 (R. 1271). It is significant that

during the incident Kaholokula was heard to say, "Don't forget, boys. Don't forget to do what I told you, boys" (R. 1708-1709). Kaholokula admitted making a speech a few days after the incident in which he said, "At Paia some men tried to go back to work and we stopped them. The police tried to help them but we were stronger. Assistant Chief Freitas and the police were there. We defied the police. If it wasn't for the smartness of Assistant Chief Freitas, there would have been bloodshed" (R. 1269-1270).

In the Kaumalapau Wharf incident the strikers arrived in truck loads to the number of 300 just before the company barge arrived for loading. There was picketing for only eight to ten minutes, when the men broke ranks and charged on the signal of Diego Barbosa (R. 404, 1621-1622). Barbosa was spokesman for five union police who headed the pickets before the charge (R. 1621; the court found Barbosa was one of the union police, R. 403). There can be no doubt that the charge on the supervisors at work on the dock was preconceived. This appears from the facts found by the court.

In the Kalua incident there was no pretense of picketing. The conduct of the strikers rivals that of the Ku Klux Klan, of which Hawaii is fortunately free. Twenty-five men, headed by union police, went up to the Kalua brothers' room to beat them out of going to work. The court finds that they "proceeded to administer a severe beating to Jacob and when his brother, Sam, attempted to rescue him, he too was beaten" (R. 408). The findings as to this incident are somewhat sparse. By the undisputed evidence, the beatings of the Kalua brothers came about through their having been ambushed by the strikers at their place of residence upon their arising to go to work. The strikers gathered outside the brothers' room and penned Jacob in the outside communal washroom. He shoved on the door and it suddenly burst open, whereupon one of the union

police came at him with a rock. He was cut over the eye and received a beating which continued for about ten minutes. When his brother Sam came out of the house to try to help him, he was rushed by some of the strikers. He managed to get away but was trailed and tripped into a seven-foot ditch. One stood over him with a sandbag and asked if he was going to work and when he said no this person said, "You better not, you dirty rat" (R. 1578-1580, 1585-1588, 1593-1596).

Not only did union police, agents and officials head up the several incidents, but on the witness stand not a single union representative made any statement that such activities were unauthorized, or that any measures had been taken by the union against their recurrence. On the contrary, Jack W. Hall, regional director for the ILWU, characterized this as "carrying on legitimate picket activity" (R. 1151), "ordinary picketing" (R. 1152).

SPECIFICATION OF ERRORS[7]

The United States district court for the district of Hawaii is in error in this case in that:

1. The court erred in holding (R. 413) that it had the authority to sit as a three-judge statutory court (points on appeal 8; argued point I-A, *infra*).

2. The court erred in holding (R. 433) that if it was not a statutory three-judge court it was sitting as a court en banc (points on appeal 9; argued point I-A, *infra*).

3. The court erred (R. 335-337, 1107-1108, 519, 370-371, footnote 1, 377, footnote 5, 436-439, 469-471, 476, 495-496) in holding that it had jurisdiction of the subject

[7] In each of the specifications of errors reference is made to the appropriate points on appeal stated pursuant to rule 19 (R. 1974-1992) where matters are stated with more particularity than is possible in the space available here. There also has been supplied a reference to the portion or portions of the brief where the specification is argued.

matter and in overruling the objections thereto stated in defendants' motion to dissolve the temporary restraining order in No. 12300, return to order to show cause in No. 12301, and motions to dismiss and for summary judgment in both cases (points on appeal 1, 3-7, 10, 24, 36, 56-60, and 86; argued point I-B, and also in points II, III-B, VI, VII and XI).

4. The court erred (R. 335-337, 1107-1108, 519, 485) in dening defendants' motions for more definite statements seeking particulars as to each individual plaintiff as to the time in which he claimed to be engaged in peaceful picketing in relation to the time of occurrence of the events alleged in the criminal charges against him, in not holding the complaints fatally defective in failing to show that the plaintiffs were being prosecuted for acts of free speech, peaceable assembly, or peaceful picketing, and in denying defendants' motions to dismiss and for summary judgment (points on appeal 2, 10, 20, 36, and 86; argued points II, VII and VIII, *infra*).

5. The court erred in holding (R. 438-439, 478) that a cause of action under the Labor-Management Relations Act 1947 was involved (points on appeal 37 and 47; argued points II-B, VII and X, *infra*).

6. The court erred (R. 476, 335-337, 1107-1108, 519) in assuming the power to review and reverse the decision of the Supreme Court of Hawaii in *Territory* v. *Kaholokula,* 37 Haw. 625, and in denying defendants' motion to dismiss and for summary judgment (points on appeal 1, 10, 24, and 86; argued point III-B).

7. The court erred (R. 461, 477, 483) in holding that it had authority to reject as erroneous the interpretation put on the unlawful assembly and riot act by the Supreme Court of Hawaii (points on appeal 22 and 25; argued point III-B).

8. The court erred in holding and decreeing (R. 439-

461, 396, 548, No. 12301, R. 95) that the unlawful assembly and riot act was unconstitutional (points on appeal 22-33, inclusive; argued point III).

9. The court erred (R. 461-467, 477, No. 12301, R. 95) in failing to await construction by the Supreme Court of Hawaii of the conspiracy statute, in striking said statute down in its entirety, and in decreeing it to be void (points on appeal 22, 34, 35; argued point IV).

10. The court erred (R. 411-412, 481-482) in finding that the unlawful assembly and riot act has been employed by the Territory only against labor groups in labor disputes, when (1) the only such testimony concerned the County of Maui during the last thirty years, it was only testified that prior to the sugar and pineapple strikes the statute had been invoked in that county once and that case grew out of a labor dispute, and it was also testified by the only witnesses on the point that Maui is a law-abiding community and that there were no other incidents in that county calling for application of the unlawful assembly and riot act; (2) no finding as to the Territory as a whole was called for; (3) the finding made by the court rested on inferences made from the absence of evidence on the part of the defendants as to prosecutions in the Territory as a whole during the period of fifty years, but the defendants did not have the burden of proof; and (4) the plaintiffs did not produce any evidence that in the County of Maui or in the Territory as a whole there were comparable offenses by groups other than labor groups which were not prosecuted under said Act by reason of intentional and purposeful discrimination (points on appeal 50; argued point V).

11. The court erred in overruling (R. 1559) defendants' objections to testimony of the defendant Crockett, called as a witness by the plaintiffs, that during his thirty years experience in the County of Maui the only cases pros-

ecuted under the unlawful assembly and riot act had grown out of labor disputes (R. 1559-1560), the objection being that there was no foundation laid by showing comparable incidents that did not grow out of labor disputes, to wit:

> "MISS LEWIS: I object to the question, your Honor. We would have to have a whole foundation laid in every incident in order to make any comparison whatsoever." (R. 1559)

(points on appeal 49; argued point V).

12. The court erred (R. 335-337, 1107-1108, 519, 469-471, 483, 548-549, No. 12301, R. 95-96) in holding that it could and would enjoin pending territorial criminal prosecutions, in denying defendants' motions to dismiss and for summary judgment, and in enjoining the pending criminal prosecutions (points on appeal 1, 4, 10, 11-19, 86; argued points II, VI and VII).

13. The court erred (R. 335-337, 1107-1108, 519, 438-439, 478-479, 513-515, 519) in holding that the ILWU and the class representatives were proper parties plaintiff, in holding that said union and class representatives were entitled to relief against the criminal statutes, in failing to hold that said union and class representatives had stated no justiciable controversy, in failing to hold that no case of threatened future prosecutions had been stated, and in denying the motions to dismiss from the actions said union and class representatives and also Jean Lane, chief of police of the County of Maui, a party defendant in No. 12300 (points on appeal 36, 37, 43, 86, 87; argued points II, VII and VIII.

14. The court erred (R. 335-337, 1107-1108, 519, 485-486) in holding inapplicable the doctrine that "he who comes into equity must come with clean hands" and in denying defendants' motions to dismiss the actions and for

summary judgment (points on appeal 1, 10, 36, 44, 86; argued point VIII).

15. The court erred in holding (R. 480, 411) that upon an application for an injunction against pending territorial criminal prosecutions, under the Civil Rights Act it constitutes a ground for intervention therein if the prosecutions are deemed by the federal court to be not in good faith, and that motives of the prosecutor are relevant thereto though concededly not relevant to the ordinary criminal proceeding (points on appeal 16, 47 and 48; argued points IX and X, *infra*).

16. The court erred (R. 411-413, 480-483, 485-486) in finding that the pending territorial criminal prosecutions were being carried on for the purpose of attack upon a labor movement and were not in good faith, first, because the constituent facts were not pleaded (points on appeal 47; argued statement of the case, *supra,* part E and point X); second, because such finding was not relevant to the question of intervention by a federal equity court in pending territorial criminal prosecutions (points on appeal 16; argued point IX, *infra*); third, because the matter of good faith of the prosecution was deemed by the court to turn on the motives of the prosecutor which concededly are not relevant to ordinary criminal proceedings (points on appeal 48; argued points IX and X, *infra*); fourth, because such finding of lack of good faith of the prosecutions was not supported by the record, and was based upon inadmissible evidence, abuse of the doctrine of judicial notice, assumptions without basis, transferral to the defendants of a burden of proof which they did not have, arrogation by the court to itself of supervisory authority over the legislative and executive branches of the territorial government which it did not have, and consideration by the court of the irrelevant question of the effect upon labor relations of prosecu-

tion of lawbreakers under the statutes invoked as compared with the effect of prosecution under other statutes. The further specifications as to this fourth matter are as follows:

a. The court erred (R. 482, 438-439, 477-479, 382-388) in taking judicial notice of and making findings and conclusions concerning the history and status of labor relations in the Territory, the attitude of the community toward the labor movement, and the mores of the community, when such matters did not have the indisputable character required for judicial notice, particularly it is not an indisputable fact that labor relations have had unchanging characteristics over the past twenty-five years, yet the court only considered past history; and it was not relevant for the court to consider the effect upon labor relations of prosecution of lawbreakers under the statutes invoked as compared with prosecution under other statutes, consideration thereof constituting an arrogation by the court of supervisory authority over the prosecutor (points on appeal 37 and 38; argued points VII and X, *infra*).

b. The court erred (R. 382-383) in taking judicial notice of and making findings and conclusions concerning Hawaii's land ownership problems when such matters were not pleaded and had no relevancy (points on appeal 38; argued point X).

c. The court erred (R. 388-390, 482) in taking judicial notice of and making findings and conclusions concerning the circumstances which led the 1929 legislature to amend the unlawful assembly and riot act, when it is the prerogative of the legislature to determine the maximum punishment and the only prerogative of a court is to consider whether the same constitutes cruel or unusual punishment within the meaning of the Eighth Amendment, a contention not presented by the plaintiffs or considered by the court (points on appeal 38; argued point X).

d. The court erred (R. 389) in taking judicial notice of the employment of special prosecutors in labor cases in 1910 and 1924, when no counsel employed by any private party was employed as prosecutor in any of the criminal prosecutions here involved or in any of the other criminal proceedings arising out of the sugar and pineapple strikes, and the matter is wholly irrelevant (points on appeal 55; argued point X).

e. The court erred (R. 381-382, 391) in finding true and giving weight to the statements of the witness Hall concerning interference with the ILWU's success in strike action by reason of enforcement of the unlawful assembly and riot statute and the conspiracy statute when such finding was based upon conclusions and speculations of the witness; the reasons given by the witness for his conclusions were contradicted by the undisputed facts in the record; and the question of the effect upon labor relations of prosecution of lawbreakers under the unlawful assembly and riot act and the conspiracy statute as compared with prosecution under other statutes was irrelevant (points on appeal 45; argued points VII and X).

f. The court erred (R. 411, 401, 398-399, 481) in holding that a statute like the assault and battery statute would have been employed if the motive of the prosecutor had been only the maintenance of good order in the community and the punishment of minor lawbreakers, when such conclusion was based partly upon inadmissible evidence (see specification of errors 17-b), and constituted an arrogation by the court to itself of authority it did not have to supervise the county attorney and to determine differences of opinion between the police and the county attorney (points on appeal 37 and 47; argued point X).

g. The court, for the reasons stated in specification of errors 10, erred in finding that the unlawful assembly and

riot act had been employed by the Territory only against labor groups, and further erred (R. 412 and 481-482) in using as demonstrative of bad faith evidence which fell short of a showing of denial of equal protection, the court thereby getting outside the legal issues and exercising supervisory authority over the prosecuting officer (points on appeal 47 and 50; argued points V and X).

h. The court erred in finding mass arrests (R. 398, 406-407, 480) when the officers sought to cope with mass violence and the court had no basis for inferring an ulterior purpose, the court included in its consideration inadmissible evidence (specification of errors 17-a) as to arrests in another county involving obstruction of the highway, and the court would not permit the questions of accountability for the criminal acts to be determined in the proper court (points on appeal 16, 37, 47, 51, 52, and 54; argued point X).

i. The court erred (R. 409-411, 481) in finding that excessive bail was required, when there was no legal issue presented as to bail, the court's holding in said matter invades the authority of the territorial court to consider reduction of bail, and an appellate court would not have found the bail excessive (points on appeal 53; argued point X).

j. The court erred (R. 401, 481) in giving weight to the fact that the second indictment in Criminal No. 2365 was returned by the grand jury before the remittitur of the Supreme Court of Hawaii in *Territory* v. *Kaholokula,* 37 Haw. 625, when the only bearing thereof was in connection with opportunity of the defendants in Criminal No. 2365 to challenge the 1947 grand jury by a plea to said indictment (points on appeal 47 and 60; argued points X and XI).

k. The court erred (R. 478-479, 438-439, 380-381, 382-

384) in considering the details of the strike negotiations, the court having received inadmissible evidence relating thereto (specification of errors 17-e) and having misconstrued the evidence, and the merits of the labor disputes in any event being irrelevant (points on appeal 37, 39, 40; argued points VII and X).

17. The court made the following further errors with respect to the admission of evidence:

a. The court erred (R. 1219, 1567, 519, 409, 481) in overruling defendants' objections to, in failing to strike, and in giving weight to the testimony concerning incidents on the Island of Oahu, City and County of Honolulu, when Oahu is under a different county prosecuting officer, there was no offer to show that the attorney general directed the placing of any charges, the defendant attorney general was not then in office, the charges in the Oahu incidents were obstructing the highway and not unlawful assembly, riot, or conspiracy, and the undisputed evidence shows that in each incident there was obstruction of the highway and in one incident there was also involved the use of physical violence, there being no finding by the court that only peaceful picketing was involved (points on appeal 51; argued point X). The substance of the evidence objected to was that Nicholas C. Sibolboro was arrested during the pineapple strike together with seven others, was taken to the police station at Wahiawa and later to the Honolulu police station, and was charged with obstructing the highway; that Sibolboro was given a six months' sentence; that the cause of his arrest was that in the course of picketing he lay down on the road in front of a truck; that eighty-three others were arrested by the Wahiawa police and taken to the Wahiawa police station and later to the Honolulu police station and charged with obstructing the highway; that the charges were nolle prossed by the city and county prosecutor (R. 1217-1223, 1345-1349, 1562-1567). The objec-

tions and motion to strike by the defendants were as set forth in the footnote.[8]

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[8] "Mr. Crockett: To which we object, if the Court please, as having no bearing whatever on the issues of this case.

"Judge Biggs: Will you explain why, Mr. Crockett?

"Mr. Crockett: Why it has no bearing; in the first place it occurred on the island at Wahiawa; it was on this island, of Oahu. The incidents which are before the Court are instances which occurred on the island of Maui, principally, and the island of Lanai, which is in the County of Maui, and as prosecuting officer I only have jurisdiction on those islands. I have nothing whatever to do with conditions here on Oahu, and in view of the circumstances we submit that they might go out and bring in a thousand persons who might present to the Court some force used or something that happened on the island of Oahu, which was not pertinent to something that took place on the island of Maui.

"Judge Biggs: What have you to say in respect to that?

"Mrs. Bouslog: I am offering this on the fact that the union charges the Attorney General is the defendant in this action, which includes all the counties of the Territory." (R. 1218-1219)

"Miss Lewis: May I ask whether, Mrs. Bouslog, the Attorney General directed that these charges be placed?

"Judge Biggs: Miss Lewis has directed a question to you. Do you propose to answer the question, or not?

"Mrs. Bouslog: Will you repeat the question, Miss Lewis?

"Miss Lewis: I asked whether you proposed to show that the Attorney General had personally directed that this charge be placed?

"Mrs. Bouslog: I don't think, your Honor, that where the charge, acting under the color of law—

"Judge Biggs: Will you answer the question, if you want to. We are not compelling you to answer it.

"Mrs. Bouslog: Our answer to the question, and in fact the whole theory of our proof, is that the Attorney General is personally responsible and has directed the full force of these laws against the working people in the Territory, in an unfair and discriminatory manner.

(Continued next page)

b. The court erred (R. 1192, 401-402, 411, 481) in overruling defendants' objections to, in failing to strike, and in giving weight to the testimony and exhibits concerning Mac Masato Yamauchi, when Yamauchi was not a party to the case; the evidence only was used by the court as an instance in which the court felt that the assault and battery statute should have been used instead of the unlawful assembly and riot act, which was an arrogation of supervisory authority not possessed by the court; and it was shown that Yamauchi as strike strategy committee foreman sent out eight cars of men to gang up on three individuals engaged in irrigating the cane during the sugar strike and the court

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"Miss Lewis: That is your theory, but you are not offering to prove that the Attorney General had anything to do with the placing of this charge, is that correct?

"Mrs. Bouslog: Through his officers and agencies, who are also police officers in the Territory, he is responsible.

"Judge Biggs: Let's not have argument here on something that has to be argued later. Suppose you proceed with the questions, and not with an unfruitful exchange." (R. 1220-1221)

"Miss Lewis: I move to strike this whole line of testimony as to what the prosecutor or the police in Honolulu have done or may do.

"Judge Biggs: Strike that portion beyond 'I talked with the persons'." (R. 1564)

"Miss Lewis: If the Court please, I don't want to take time for further cross-examination. I would like to move to strike the testimony. To clear up these matters we would have to bring in all these different police records and other proceedings. I think we are going entirely too far afield, your Honor. To go into the City and County of Honolulu, which is under an entirely different—it is under City and County administration. The prosecutor is appointed by the Mayor. True, the Attorney General has general supervision, but there has been no offer to show that the Attorney General personally directed these particular charges that Mrs. Bouslog was referring to." (R. 1566-1567)

did not find to the contrary (points on appeal 52; argued point X). The substance of the evidence objected to was that Yamauchi, with others, was arrested during the sugar strike; an indictment was returned in three counts, one for riot, one for conspiracy third degree, and one for assault and battery; Yamauchi and the others pleaded nolle contendere to the assault and battery charge and the other charges were dropped; and sentence (fine and suspended imprisonment) was imposed on January 8, 1947, which concluded the matter (R. 1191-1213). The objection was as follows:

> "Mrs. Bouslog: Mr. Crockett said he would not object as to the form.
>
> "Mr. Crockett: No; we are willing to stipulate that that is a copy of the complaint. As I informed counsel, we will object to it because it is not material to the issues in this particular case." (R. 1192)

c. The court erred (R. 382 and 519) in overruling defendants' objections to, in failing to strike, and in giving weight to the testimony of the witness Hall concerning the longshoremen's strike not attempted by the union, when such testimony was wholly speculative and was irrelevant for the reasons stated in specification of errors 16-e (points on appeal 45 and 46 (a); argued points VII and X). The substance of the evidence objected to was that the unlawful assembly statute played a part in the determination by the union as to whether it would undertake a strike of longshoremen and the conclusion reached was that it would be suicide to attempt to strike with such a statute hanging over the heads of the union, "a statute that could easily be invoked and has been in our opinion, or where there have been minor disturbances that might have been provoked by agents provocateur" (R. 1152-1154). The objection was as follows:

"Mr. Crockett: We object to the question because it calls for an opinion of the witness involving something that may happen in the future, or purely speculative." (R. 1153)

d. The court erred (R. 1185, 519, 1303, 1304, 1364) in overruling defendants' objections to and in failing to strike the testimony of the witnesses Rania, De la Cruz, and Kawano concerning the effect of arrests on the union membership, since such testimony was argumentative and merely the conclusions of the witnesses, and was irrelevant for the reasons stated in specification of errors 16-e (points on appeal 46 (b), (c) and (d); argued points VII and X). The substance of the evidence given by the witnesses was that the unlawful assembly and riot statute was directed against labor, that it put fear into the members, that the number arrested was terrific, that the pineapple strike was affected by the number of arrests on Lanai under the unlawful assembly and riot statute with a penalty of twenty years, that the membership fell off after the loss of the pineapple strike, and that the unlawful assembly and riot statute influenced the union not to have a strike of longshoremen (R. 1183-1185, 1303-1306, 1362-1365). The objections were as set forth in the footnote.[9]

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[9] "Mr. Crockett: If the Court please, I ask that the statement of the witness be stricken as a mere conclusion, and argumentative." (R. 1185)

"Mr. Crockett: To which we object, if the Court please, as calling for a conclusion. I don't think he is competent to give his conclusion." (R. 1303)

"Mr. Crockett: To which we object, if the Court please. How could he testify as to that? The witness might say it did or didn't. It is purely speculative and calling for a conclusion. I submit it is not within his power to form an intelligent opinion upon that subject. It is too remote." (R. 1304)

(Continued next page)

e. The court erred (R. 1149, 381) in overruling defendants' objection to the admission of testimony as to whether any employer in the sugar or pineapple industry ever agreed to submit to arbitration a wage issue and in giving consideration to said matter in its opinion, when the merits of the labor dispute were immaterial to the case (points on appeal 40; argued points VII and X). The substance of the testimony was that employers in the sugar and pineapple industries had never agreed to submit to arbitration a wage issue (R. 1149-1150). The objection was as follows:

> "Mr. Crockett: To which we object, if the Court please, as being incompetent, irrelevant and immaterial to the issues in this case. It is speculative." (R. 1149)

18. The court erred (R. 335-337, 1107-1108, 519, 486-496, No. 12301, R. 94, 96) in holding that a challenge to the composition of the territorial grand jury for the second circuit could be made collaterally in the federal equity court in lieu of presentation in the criminal court, in denying defendants' motions to dismiss the action and for summary judgment, in overruling and refusing to strike objections to the entire line of testimony concerning the grand jury, and in decreeing void the indictment returned by said grand jury (points on appeal 15, 19, 56-62,

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"Mr. Crockett: We object to that as calling for a conclusion of the witness with no foundation laid on which to base his conclusion; also calling for more or less a conclusion almost as to whether or not the law does have any effect on the rights of the union." (R. 1362-1363)

"Judge Biggs: I think that takes it far enough. You renew your objection to the question?

"Mr. Crockett: Yes, if the Court please, on the same ground I stated." (R. 1364)

64, 68 and 86; argued point XI, also points VI and VII). This line of testimony consists of R. 59-87, 567-1082, 1224-1235, 1251-1255, 1370-1553, 1559 (first fourteen lines), 1560 (beginning in middle of page), 1561, 1568-1569, 1572-1576, 1689, 1740-1752, 1753 (first eight lines), 1794-1833. The objections thereto were as set forth in the footnote.[10]

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[10] "Civil Nos. 828 and 836
Re Grand Jury

"Defendants object to the receipt or consideration of the testimony taken before the Honorable A. M. Cristy on the grand jury challenges made by Barbosa and others and the exhibits in that proceeding, on the ground that none thereof is material or relevant in these proceedings, and upon the following grounds:

"In Civil No. 828, the whole question of the composition of the grand jury is moot, and in any event the plaintiffs would have no recourse in this court until they had exhausted their remedies in the territorial courts and upon appeal therefrom.

"In Civil No. 836, there is no issue before the court because an attack on the composition of the grand jury cannot be made collaterally in federal court, and if not made in the territorial court at the first opportunity is waived. No such attack has been made in the territorial court by the plaintiffs in Civil No. 836. Either plaintiffs have had an opportunity to present this issue in the territorial court and have waived it, or else they have had no opportunity and can still present all contentions based on the constitution and laws of the United States, under the doctrine of Carter v. Texas, 177 U.S. 442. In any event plaintiffs must exhaust their remedies in the territorial courts and upon appeal therefrom.

"Defendants further object to the receipt or consideration in Civil No. 836 of the motions and challenges to the grand jury made by Barbosa and certain others, not parties in Civil No. 836, the orders and ruling of Judge Cristy in the proceedings held thereon, and the certificates of disqualification of Judge Wirtz and Order and Authorization

(Continued next page)

19. The court erred (R. 496-512, No. 12301, R. 96) in finding and concluding that the 1947 territorial grand jury of the second judicial circuit was constituted illegally and in decreeing void the indictment returned by said grand jury, when such finding and conclusion was based on the erroneous findings set forth in specifications of errors 20 and 21 (points on appeal 65-72, 75-80; argued point XI, *infra*).

20. The court erred (R. 499-501, 504-509, 385-388) in finding a deliberate weighting of the grand jury list in favor of a group arbitrarily constituted by the court (the employer-entrepreneur group inclusive of haoles), and against the laboring men of the community, when (1) the members of the grand jury list who were arbitrarily grouped together to constitute the employer-entrepreneur-haole group included persons of variant background, such as government workers and members of the ILWU, and included non-caucasians as well as caucasians; (2) the word "haole"

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to Judge Cristy, upon the grounds above stated and upon the further ground that the same are incompetent and immaterial in Civil No. 836, as they concern proceedings not taken by any plaintiff in that case.

"And defendants further call to the court's attention that challenges to individual members of the grand jury are not involved in these proceedings and the testimony and rulings relating thereto have no materiality or relevancy here. We object to the receipt or consideration of such testimony and rulings on that additional ground, as well as the grounds already stated. This specifically applies to the transcript at the bottom of page 80 beginning with 'Mr. Resner' to page 88, line 11; bottom of page 409, beginning with 'court' to page 419 where the direct examination of Kenneth Auld begins; and page 551 beginning with the word 'secondly' to page 554, line 15, as well as other matters scattered through the transcript" (R. 1130-1132, renewed R. 1370, 1518).

was given variant meanings by the court, but if used to describe part of the caucasian race in contradistinction to another part of the caucasian race it is irrelevant, and if used to describe persons of economic and social attainment it adds nothing to the term "employer-entrepreneur," hence is equally irrelevant; (3) there is no constitutional requirement of proportionate representation; (4) the jury commissioners by law are entitled to select the grand jury list, which imports the exercise of judgment and discretion, but the rule laid down by the court would require them to proceed instead according to a statistical objective impossible of attainment; (5) in finding, in effect, that there were too few laborers on the grand jury list in relation to the number of laborers in Maui County, the court used the device of comparing dissimilar matters—persons of known eligibility (laborers on the list) and persons of unknown eligibility (laborers in Maui County, who included many Filipino non-citizens); and (6) in finding that the asserted overweighting was deliberate the court misconstrued the testimony, and in particular misconstrued the testimony of Jury Commissioner Pombo as indicative of deliberate overweighting, but Mr. Pombo was an old-time champion of the working man and was not a haole according to both his own and the court's classification (points on appeal 69, 70, 71, 72, 75, 76; argued point XI, *infra*).

21. The court erred (R. 501-505, 508, 509) in finding a deliberate exclusion of Filipinos from the 1947 grand jury list, when: (1) the court, without proof, assumed a relevant distinction between Filipinos and other Oriental peoples; (2) the court used as evidence a registry of voters which was not available to the jury commissioners until they were practically finished making their selections; (3) the court assumed "numerous" Filipinos to be qualified on the basis of the 1946 questionnaires, thereby preempting the authority of the jury commissioners to determine compliance with

the literacy, citizenship and other requirements (e.g., the court named three Filipinos as qualified and the jury commissioners had found three other Filipinos qualified); (4) plaintiffs did not prove a long continued exclusion of eligible Filipinos, and their eligibility cannot be assumed under the surrounding circumstances (e.g., they are a recent immigrant group, up until 1946 they could only be naturalized in exceptional instances, and the native born are just beginning to attain the required age); (5) the court considered items 3 and 7 of the questionnaire to prospective jurors, but there was no evidence that any jury commissioner used the questions to determine that a person was a Filipino and then used that determination as the basis for excluding him; and (6) the court's almost complete reliance on the statement of Commissioner Pombo that there were no Filipinos on the grand jury list because there were better men fails to evaluate that statement either in the light of the rest of Pombo's testimony just preceding the words quoted by the court (i.e., that he picked a man on his merits and not on his race or color) or in the light of the statements of each commissioner that he did not exclude any person on the basis of race or color (points on appeal 77, 78, 79, 80; argued point XI, *infra*).

22. The court erred (R. 547, No. 12301, R. 93) in denying the motion to dismiss the defendants Bevins and Crockett after they had ceased to hold office (points on appeal 88; argued point XII, *infra*).

SUMMARY OF ARGUMENT

The court below proceeded on the correct assumption that the relations between the federal court and the territorial courts are the same as the relations between federal courts and state courts; the error lies in the complete misconception of what such relationship is and necessarily must be, if state and territorial courts are to be responsible

for the enforcement of criminal laws. Before developing this further we turn to some preliminary matters.

Point I-A of our argument considers the composition of the court and submits that the opinion below has the status of one rendered by a single judge. In part B of point I we submit that the court lacked jurisdiction of the subject matter. While the provision eliminating jurisdictional amount in civil rights cases applies in Hawaii so does the statute prohibiting injunctions staying state court proceedings; as to pending criminal prosecutions this prohibition is absolute. An equity court has no jurisdiction to stay pending criminal prosecutions.

Point II refers to the nature of the alleged causes of action, and points out that plaintiffs have not shown deprivation of rights secured by the Constitution since the Constitution gives no right to violence. Thus they do not make out a case under the Civil Rights Act. As to the theory that the cases arise under the laws regulating commerce, injected by the court below in its opinion, we show that the cases are not of that nature.

In point III, after considering the origin of the unlawful assembly and riot act and the nature and effect of the 1949 amendments made after these cases were decided below, we proceed to consideration of the decision of the Supreme Court of Hawaii in *Territory* v. *Kaholokula,* rendered in the very criminal case involved in No. 12301 in this Court. In that case the Supreme Court of Hawaii construed the unlawful assembly and riot act and upheld its constitutionality. This decision is binding and conclusive upon the parties who took the appeal to the Supreme Court of Hawaii, subject to review by a court of appellate jurisdiction. The United States district court was without jurisdiction to review it, and in endeavoring to do so it invaded the appellate jurisdiction of this Court. Moreover, even as to the persons who were not parties to the appeal to the Supreme Court

of Hawaii the decision of that court is determinative of the construction of the unlawful assembly and riot act, and the constitutionality of the statute must be judged in the light of that authoritative construction. The rule of *Railroad Commission* v. *Pullman Co.*, 312 U.S. 496, is not satisfied by awaiting state court construction only to ignore it, and the court below erred in placing its own construction on the statute.

In part C of point III we show that the unlawful assembly and riot act as construed by the Supreme Court of Hawaii is valid, that every state in this circuit has an unlawful assembly and riot statute (Appendix VI), and that the court below reached the result it did by ignoring the entire body of common law principles and the ordinary touchstones of criminal law. The recent case of *Cole* v. *Arkansas,* decided by the Supreme Court in 1949, is decisive of the validity of this statute.

Only brief attention is paid to the conspiracy statute, inasmuch as the portion thereof making punishable a conspiracy to commit an offense clearly was constitutional and therefore the criminal cases should have been allowed to proceed (point IV). No reasons were given by the court for striking down the conspiracy statute in toto.

The argument then proceeds to consideration of the plaintiffs' contention that prosecution of the pending cases would deny them the equal protection of the laws (point V). To make out a case of denial of equal protection, at the very least it must be shown that other classes of persons, guilty of comparable offenses, have not been prosecuted due to intentional and purposeful discrimination without valid reason. As to this essential element of a claim of denial of equal protection the court made no finding. Moreover, the court erred in placing on the defendants the burden of proving prosecutions in other counties under the un-

lawful assembly and riot act, of which defendants were first apprised in the opinion of the court.

Having thus considered the defenses of the plaintiffs to the prosecutions pending against them and the nature of the federal court's intervention, we next submit that a federal equity court cannot enjoin pending state or territorial criminal prosecutions, that it lacks jurisdiction to do so, and that there is a vital distinction between pending and future prosecutions (point VI-A). Additionally, as a matter of statutory prohibition, proceedings that are pending in a state or territorial court, even civil proceedings, are not subject to stay by a federal injunction (section 265 of the old judicial code, 28 U.S.C. 379, section 2283 of the new judicial code). This statute, applicable in the Territory of Hawaii by reason of the relations between the two systems of courts, has only a few well defined exceptions and the instant cases do not fall within any of the exceptions (point VI-B).

Part C of point VI submits that the Civil Rights Act did not enlarge the equity jurisdiction of federal courts, that this was expressly provided in the Civil Rights Act itself, and that in so far as Congress intended federal court intervention for the preservation of civil rights in state criminal cases, Congress provided therefor in the removal statute. The only other source of jurisdiction of a federal court in pending state criminal cases lies in the writ of habeas corpus, but this power has been narrowly limited.

Point VII supplements point VI by showing that nothing is involved in these cases except the pending criminal prosecutions, that is, no cause of action was stated by the union or class representatives. This is clear in the light of the principles governing the justiciability of controversies. The present cases bear no resemblance to *A. F. of L.* v. *Watson,* 327 U.S. 582, upon which the court below relied. Discussion of the position of the union and the class representa-

tives in these cases is completed in point VIII, where the maxim that "he who comes into equity must come with clean hands" is considered. The court below erred in failing to perceive the difference between pursuit of activities which, unless the statute under attack imposes a valid restraint, are lawful and constitutionally protected, and pursuit of conduct which, as in the present cases, irrespective of the constitutionality of the statute under attack is unlawful and not constitutionally protected.

Having shown that only pending territorial criminal prosecutions are involved in these cases, and that a federal equity court lacks jurisdiction to intervene therein and is prohibited by statute from doing so, the federal court's power of intervention being limited to removal of the case or habeas corpus, we proceed in point IX to consider whether, in the exercise of those specific powers, alleged bad faith of the prosecution constitutes an exceptional circumstance which will move the federal court to intervention in pending criminal cases. It is not an exceptional circumstance and the federal courts remit petitioners to their remedies in the state courts to show lack of good faith of the prosecution. The statement that "no person is immune from prosecution in good faith for his alleged criminal acts" therefore must be judged in the light of the cases in which the statement is made, which are cases relating to threatened future prosecutions. The quoted statement relates to a situation such as that in *Hague* v. *CIO,* 307 U.S. 496, where it was deportation from the city, not criminal court adjudication, that was threatened; the statement means that where criminal court adjudication will ensue, no one is guaranteed against the prospect of having to present his contentions there.

Point X takes up the finding that the criminal prosecutions were not in good faith, and shows that the court below based this finding on the erroneous holding that motives

are relevant to good faith under the Civil Rights Act; the court conceded that the motives of the prosecutor are not relevant to the ordinary criminal proceeding. The court probed the motives of the prosecutor by considering the impact of the unlawful assembly and riot act on labor relations; the court agreed that the conduct involved was unlawful but disagreed with the prosecutor as to the statute to be invoked and inferred therefrom an ulterior purpose. Thus, under the guise of a finding of lack of good faith, the court assumed supervisory authority over the selection of the statute to be invoked, which is power the court does not possess. There was no showing or finding of any concert of action between the prosecuting officers and the employers or anyone else.

Point XI deals with the issues concerning the 1947 Maui County grand jury. Part A points out that, in No. 12300, plaintiffs deliberately mooted the challenges that, in No. 12300 only, had been made in the territorial court. The court recognized that the issue was moot in this case. Part B submits that the court lacked power to pass upon the grand jury issue in No. 12301, because a federal equity court does not have jurisdiction either to entertain a collateral attack on the composition of a territorial grand jury or to enjoin a pending territorial criminal prosecution. Part C examines the merits of the issues in No. 12301 and demonstrates that: (1) plaintiffs did not prove either the discriminatory exclusion of Filipinos (if Filipinos be a "race" for this purpose) or the deliberate weighting of the grand jury list in favor of businessmen (including "haoles") and against laborers; and (2) on the latter point the lower court laid down a new rule of occupational proportional representation which is impossible for jury commissioners to apply and is not required by the constitution. The court correctly dismissed as without merit plaintiffs' contention based on the exclusion of women.

Point XII submits that the court erred in denying the motion to dismiss the defendants Bevins and Crockett after they had ceased to hold office.

Appendix I contains notes supplementing the argument, where these notes are cited. (The brief, inclusive of the supplementary notes, does not exceed the number of pages allowed by the court for these consolidated cases.)

ARGUMENT

I.

THE COURT WAS NEITHER A STATUTORY THREE-JUDGE COURT NOR A COURT EN BANC. HOWEVER CONSTITUTED, THE COURT LACKED JURISDICTION OF THE SUBJECT MATTER.

A.

The court was neither a statutory three-judge court nor a court en banc.

The court held that it was a specially constituted three-judge court under sections 2281 and 2284 of the new judicial code (section 266 of the old judicial code, 28 U.S.C. 380), or if those provisions were inapplicable in the United States District Court for the District of Hawaii, then it was a court of three judges sitting en banc (R. 432-433; Decree, R. 546 and No. 12301, R. 93). The court was not a statutory three-judge court. The circumstances did not permit of the adoption of the alternative theory that the three-judge court was sitting en banc.[11] District Judge McLaughlin necessarily would be a member of any en banc court. Assuming that the volume of business in the district (R.

[11] We concede that we did not attack in the court below its authority as an en banc court, for we thought the court could sit as a specially constituted three-judge court, though not conceding that substantial questions requiring such a court were presented (R. 1099-1102). However, questions of jurisdiction are always pertinent.

1997-1999) necessitated calling in two outside judges when it was decided to convene a statutory three-judge court, this does not support Judge McLaughlin's absence from an en banc court. The purpose of an en banc court is to obviate conflicts in decisions among the judges of a single court. *Textile Mills Corp.* v. *Commissioner,* 314 U.S. 326, 335[12] (1941), affirming 117 F. 2d 62 (C.A. 3d 1940). Where the quorum of the court is specified, as here a quorum of one judge, the reasoning is that nevertheless the whole number of members of the court constitute the court and may sit as such if they so determine (117 F. 2d supra, at p. 70).

The opinion below relies strongly on subsection (b) of section 132, revised code.[13] Whether or not the second sentence of subsection (b) permits assigned judges to sit in an en banc court, it is evident from the first sentence and also from subsection (c) that the "court" which holds an en banc session must be constituted with at least all judges for the district in active service, here District Judges Metzger and McLaughlin. The cases cited in the opinion (revised footnote 59, R. 435, 521-522) relate to the question of what constitutes a quorum in certain jurisdictions, a question not here in doubt. The question at issue is the power of the court to sit with a number greater than a quorum, that nevertheless does not include the whole court.

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[12] The citations of U. S. reports in the Supreme Court Reporter and Law Edition are given in the Table of Cases.

[13] "§ **132. Creation and composition of district courts.**
* * *

"(b) Each district court shall consist of the district judge or judges for the district in active service. Justices or judges designated or assigned shall be competent to sit as judges of the court.

"(c) Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges."

It is idle to speculate, as is done by the court (revised footnote 59, R. 435, 521-522), on what the effect would be if the district judge not sitting had died or were disqualified or absent. Such was not the case.[14]

We submit that the opinion below has the status of one rendered by a single judge, Chief Judge Metzger of the District of Hawaii, and that the three judges who heard the case had no authority to sit en banc.

B.

The Court lacked jurisdiction of the subject matter.

The court held (R. 371, note 1, R. 377-378, note 5, R. 436-439) that it had jurisdiction under section 24 (14) of the old judicial code, 28 U.S.C. 41 (14), section 1343 of the new judicial code,[15] that jurisdictional amount was unnecessary, and that "damages to the individual plaintiffs in either action are not cognizable in terms of money" (R. 377-378, note 5). The court further found that enforcement of the unlawful assembly and riot act caused a decrease in the membership of the union which resulted in loss of dues to the union in excess of $3,000.[16] The court

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[14] See "Suggestion for incorporation in the record on appeal," R. 558-564. The court below made no order relative to this suggestion. See affidavit of counsel filed in this Court, Appendix VIII. Pursuant to Rule 75 (h) of the Federal Rules of Civil Procedure this Court is authorized to consider the subject matter so presented.

[15] These provisions are set out in the appendix p. 165.

[16] In addition to finding jurisdictional amount in the case of the union, the court also held that an unincorporated association could sue under the Civil Rights Act without it (R. 513-515). In so holding the court reverted to the opinion of the Court of Appeals in the *Hague* case, 101 F. 2d 774, 790, which was written by Mr. Justice Biggs who wrote the opinion below; the court admitted that the opinion of the Supreme Court in the *Hague* case did not support its ruling. See 307 U. S. at pp. 514, 525-527. Other cases cited by the court below (*A. F. of L.* v. *Watson*, 327 U. S. 582, 587,

erred in this latter finding, for the reason that it was based on the theory that a case like *A. F. of L.* v. *Watson*[17] had been stated by the union (R. 514); the union stated no such case (point VII, infra). Nor did the union have a legal interest, recognizable as a basis for adjudication, in the pending criminal prosecutions, for it was not a defendant in the criminal cases or in danger of becoming such. Compare *Toomer* v. *Witsell,* 334 U.S. 385, 391, holding that the corporate appellant had no standing in court. See 28 U.S.C. 80 (sec. 1359 of the new code) providing that jurisdiction cannot be based on the improper joining of a party.

There having been no finding of jurisdictional amount as to the individual plaintiffs, applicability of paragraph (14) is essential to jurisdiction (*Hague* v. *C.I.O.,* 307 U.S. 496). There has been a conflict in the rulings concerning the applicability of this provision in Hawaii. Cf *Mo Hock*

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and *Grosjean* v. *American Press,* 297 U. S. 233, 244) are not in point because they did not sustain jurisdiction under the Civil Rights Act.

The court below seems to have assumed, without giving any reasons therefor, that a right to sue under the Civil Rights Act automatically would mean that jurisdictional amount was unnecessary (R. 436-438). This was error. As pointed out by Mr. Justice Stone in the *Hague* case (307 U. S. at pp. 527-532) the right to sue without jurisdictional amount is limited to cases in which the right asserted is inherently incapable of pecuniary valuation. We submit that rights incapable of pecuniary valuation necessarily are individual rights, and that the ILWU, viewed apart from its members (who sued by class representatives) and treated as an artificial entity having standing to sue as such under the Federal Rules of Civil Procedure, could not sue without jurisdictional amount anymore than could a corporation.

[17] In *A. F. of L.* v. *Watson,* 327 U.S. 582, the law under attack was one regulating the right to bargain collectively for a closed shop. Judged in the light of the principles which govern findings of jurisdictional amount (*McNutt* v. *General Motors,* 298 U. S. 178, 181; *Packard* v. *Banton,* 264 U. S. 140; *Snively Groves Inc.* v. *Florida Citrus Commission,* 23 F. Supp. 600, D. C. Fla.) some such case as was involved in *A. F. of L.* v. *Watson* was essential as a basis for the finding of jurisdictional amount.

Ke Lok Po v. *Stainback,* 74 F. Supp. 852, reversed on another point 336 U.S. 368; *Alesna* v. *Rice,* 74 F. Supp. 865, affirmed on other grounds 172 F. 2d 176. See the early ruling that jurisdictional amount was necessary, made in the case below (R. 102, 1087).

We are of the view that paragraph (14) applies in Hawaii, notwithstanding the use therein of the word "state,"[18] but by the same token section 265 of the old judicial code prohibiting injunctions staying state court proceedings, 28 U.S.C. 379, section 2283 of the new judicial code, applies in Hawaii[19] and prohibits the relief granted.

The court below (R. 436, 468-469) sustained the applicability in Hawaii of both of these statutory provisions upon the reasoning stated in the portion of its opinion relating to the three-judge-court provision. Since the three-judge-court provision fell because of the burden placed by it on the functioning of the federal judicial system, and not because of any general inappropriateness in the Territory of Hawaii of statutes of the type being considered, the applicability of the latter remains unaffected. This is made clear by the *Mo Hock Ke Lok Po* case itself, wherein the very ground of reversal of the decision below upholds the independence of the territorial judicial system, the Supreme Court holding that the federal court should not have entertained the case because: "territorial like state courts are the natural sources for the interpretation and application of the acts of their legislatures and equally of the propriety of interference by injunction" (336 U.S. at p. 383). Hence, this court's pronouncement in the *Alesna* case (172 F. 2d at p. 179) that: "the Organic Act places the courts of the Territory of Hawaii in a relatively similar position to the

[18] The word "state" includes "territory" in some situations. *Andres* v. *United States,* 333 U. S. 740; *Stainback* v. *Mo Hock Ke Lok Po,* supra, at p. 378.

[19] The statute is set out in the appendix, pp. 166-168, together with the authorities relating to its applicability in Hawaii.

federal judicial system as are the state courts," and that "if a constitutional district court is precluded by statute or rule of law from interfering in state court proceedings similar to the proceedings in which this *Rice* order was issued, the United States District Court for the District of Hawaii is precluded from interfering with the territorial court proceedings," remains good law after the *Mo Hock Ke Lok Po* case, as it was before.

The question of jurisdictional amount aside, the court lacked jurisdiction over the subject matter because the rule prohibiting a federal equity court from interfering in pending state and territorial criminal prosecutions is absolute and jurisdictional, as will be submitted in point VI. Moreover a federal equity court lacks jurisdiction to entertain a challenge to a territorial grand jury (point XI, infra) and lacks jurisdiction to review a decision of the Supreme Court of Hawaii (point III, infra).

As to section 24 (8) of the old judicial code, 28 U.S.C. 41 (8), section 1337 of the new judicial code, upon which the court below also relied for its jurisdiction, its applicability in Hawaii is unquestioned but it has no application in this case. This is considered in point II.

II.

PLAINTIFFS DID NOT SHOW A CASE ARISING UNDER THE CIVIL RIGHTS ACT OR A LAW REGULATING COMMERCE.

A.

Plaintiffs did not show a case arising under the civil rights act.

To establish a cause of action under 8 U.S.C. 43[20] each plaintiff must show that: (1) he is a citizen of the United States or a person within its jurisdiction; (2) he has a right, privilege or immunity secured by the Constitution and laws of the United States; (3) he has been deprived of such right, privilege or immunity; (4) he has been so deprived by a person under color of a statute, ordinance, regulation, custom or usage of the Territory of Hawaii; and (5) he has been injured by such deprivation. *Hague* v. *CIO,* 307 U.S. 496, 507, 512; *Bomar* v. *Keyes,* 162 F. 2d 136, 138, 139, cert. denied 332 U.S. 825.

In all cases arising under the Constitution and laws of the United States (of which a civil rights case is an instance)

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[20] This section reads as follows:

"§ **43. Civil action for deprivation of rights.**

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R. S. § 1979."

The complaints also cited 8 U. S. C., sections 41, 44 and 46. However, only section 43 grants a substantive right of action (*Hague* v. *C.I.O.,* 307 U.S. 496, 512, 525, 526). Section 41 is simply a general declaration of policy by Congress, passed originally (in the Civil Rights Act of April 9, 1866) to implement the Thirteenth Amendment (1865), and later reenacted (in the Civil Rights Act of May 31, 1870) to implement the Fourteenth Amendment (1868). Section 44 relates exclusively to juries and is discussed in point XI; this section is now section 243 of Revised Title 18 U. S. C. (The Criminal Code). Section 46 relates solely to Supreme Court review of cases arising under section 44.

the cause of action must be grounded in a right or immunity derived from the Constitution or laws, and it is not enough that a federal defense to state action lurks in the background. *Gully* v. *First National Bank,* 299 U.S. 109, and cases cited; *Defiance Water Co.* v. *Defiance,* 191 U.S. 184. As stated by Mr. Justice Jackson in *National Insurance Co.* v. *Tidewater Co.,* 337 U.S. 582, 597:

> "* * * a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's *cause of action.*"

What is this right, privilege or immunity of which plaintiffs allege they have been deprived? Certainly it is not the right to violence, for the Constitution does not secure such a right. Yet the plaintiffs did not deem it part of their cause of action to show, and the court below did not deem it part of plaintiffs' cause of action to find, that lawful constitutionally protected acts of free speech or peaceable assembly occasioned the criminal prosecutions (See statement of the case, *supra,* pp. 13-14). Plaintiffs' case differs radically from *Hague* v. *CIO, supra,* and other civil rights equity cases, where the plaintiffs have shown and the court has found that pursuit of constitutionally protected activities occasioned the defendants' interference. Hence, plaintiffs did not show a case arising under the civil rights act.

The foregoing discussion has been centered in the cause of action for invalidation of the criminal statutes. The cause of action for invalidation of the grand jury is considered in points VI and XI.

B.

Plaintiffs did not show a case arising under a law regulating commerce.

The remaining provision relied upon by the court below to sustain its jurisdiction is that relating to suits and pro-

ceedings "arising under any law regulating commerce."[21] The pleadings herein did not allege, or attempt to allege, any cause of action "arising under any law regulating commerce." This matter did not come into the cases until the court introduced it in its opinion. It is extraneous to any issue in the case. To arise under a law regulating commerce, there must be a "controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends." *Gully* v. *First National Bank, supra,* 299 U.S. at p. 214. Such controversy must appear from plaintiff's own statement of its case at the outset. *Banker's Casualty Co.* v. *Minneapolis, St. Paul Ry.,* 192 U.S. 371. In the present cases it was not pretended by the plaintiffs that anything was added to the rights claimed under the Constitution and civil rights act by the National Labor Relations Act (49 Stat. 449, c. 372), or the Labor-Management Relations Act 1947 (61 Stat. 136, 29 U.S.C. Supp. 141 et seq.), cited by the court as laws regulating commerce, but not cited in the pleadings, and not involved in the case.

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[21] Section 24 (8) of the old judicial code, 28 U.S.C. 41 (8), confers jurisdiction:

"Eighth. Of all suits and proceedings arising under any law regulating commerce."

Section 1337 of the new judicial code is substantially the same, except that it also includes paragraph (23) of the former section 24. It reads as follows:

"The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

III.

THE COURT ERRED IN PLACING ITS OWN CONSTRUCTION UPON THE UNLAWFUL ASSEMBLY AND RIOT ACT, DIFFERING FROM THAT OF THE SUPREME COURT OF HAWAII, AND IN INVALIDATING THE STATUTE ON THE BASIS OF ITS OWN CONSTRUCTION.

A.

Origin of the Statute; 1949 amendments.

The history of the unlawful assembly and riot statutes is set forth in the appendix,[22a] where it is shown that it was enacted in 1850 and continued in effect by the Hawaiian Organic Act. Unlawful assembly and riot statutes exist throughout the United States; every state in this judicial circuit has such a statute or statutes (Appendix VI). The Hawaiian statute as it stood at the time of these cases is printed in Appendix II, pp. 188-192, and references are to the sections there set forth.

By Act 62 of the Session Laws of Hawaii 1949 the statute was completely amended. This Act is set forth in Appendix III, pp. 192-195. The maximum punishment for any offense under the amended Act is two years. Section 6 of this 1949 Act provides that it shall not affect the liability of any person to prosecution and punishment for the offense of riot committed prior to the effective date of said Act (the effective date being April 21, 1949), "provided further, that in no event shall the punishment for any such offense exceed the punishment provided for the offense of riot by section 11579 of the Revised Laws of Hawaii 1945, as amended by this Act," i.e., a maximum of two years imprisonment or fine.

[22a] Appendix, pp. 168-170.

B.

Effect of the decision of the Supreme Court of Hawaii in Territory v. Kaholokula (37 Haw. 625).

The decision is binding and conclusive on the parties who took the appeal to the Supreme Court of Hawaii. The defendants in Criminal No. 2365,[23] plaintiffs in No. 12301, have been heard in the Supreme Court of Hawaii on the very questions of the construction and constitutionality of the unlawful assembly and riot act presented in the court below. The Supreme Court held that the statute was derived from the common law, that it did not apply to peaceful picketing or any peaceful acts, that no one could be prosecuted under the statute without a showing of participation of at least three persons in acts which struck terror or tended to strike terror into others, and that persons merely present could not be prosecuted, only persons who, by promoting or abetting the lawless acts, became principals therein. The Supreme Court held that the statute was constitutional.

Shortly after the Supreme Court announced its opinion the appellants there brought suit in the court below. This was in violation of the established principle that a United States District Court *does not have jurisdiction* to relitigate the constitutionality of a statute sustained by a state court. This court so held as to a criminal statute in *Borland* v. *Johnson,* 88 F. 2d 376 (C.A. 9th, 1937) cert. denied. 302 U.S. 704, citing *Rooker* v. *Fidelity Trust Co.,* 263 U.S. 413, which holds at p. 416 that such relitigation "would be an exercise of appellate jurisdiction. The jurisdiction possessed by the district courts is strictly original." It was so held in *Chirillo* v. *Lehman,* 312 U.S. 662, affirming on the authority of *American Surety Co.* v. *Baldwin,* 287 U.S. 156,

[23] Masao Sera is the only one of these defendants who was not a party to the appeal to the Supreme Court of Hawaii.

169, the opinion in 38 F. Supp. 65, 67, that "a judgment of a state court may not be reviewed by a bill in equity in a federal court." In the *American Surety Co.* case the Supreme Court aptly says (287 U.S. at p. 169): "Federal claims are not to be prosecuted piecemeal in state and federal courts." There are many other cases to the same effect.[24]

Therefore the lower court erred (R. 476-477, No. 12301, R. 95) in decreeing the unlawful assembly and riot act void as to the very defendants in Criminal No. 2365 who appealed to the Supreme Court of Hawaii.

The decision is determinative of the construction of the unlawful assembly and riot act. Manifest error was committed by the lower court in its treatment of the construction put upon the unlawful assembly and riot act by the Supreme Court of Hawaii in *Territory* v. *Kaholokula, supra.* Even if the Supreme Court's decision as to the constitutionality of the statute was not binding as to those who were not parties to the *Kaholokula* appeal, the Supreme Court's *interpretation* of the statute was binding in *any* case in the federal court, being a matter of local law.[25] The federal question begins with the statute as authoritatively interpreted by the local court. It is for this reason that, where the constitutionality of a state statute is attacked in a federal equity court and the statute has not been construed, the court will not proceed but will hold the case to await an authoritative construction of the state statute, so that its constitutionality may be judged in the light of that

[24] *Napa Valley Electric Co.* v. *Railroad Commission,* 257 Fed. 197, 199 (D.C. Cal.); *Consolidated Freightways* v. *Railroad Commission,* 36 F. Supp. 269 (D.C. Cal.); *Baker Driveway Co.* v. *Hamilton,* 29 F. Supp. 693 (D.C. Pa.); *General Exporting Co.* v. *Star Transfer Line,* 136 F. 2d 329; 335 (C.A. 6th 1943); *Ritholz* v. *North Carolina Board,* 18 F. Supp. 409, 413 (D.C. N.C.); *Davega-City Radio Inc.* v. *Boland,* 23 F. Supp. 969, 970 (D.C. N.Y.); *Frazier Co.* v. *Long Beach,* 77 F. 2d 764 (C.A. 3d).

[25] *Hebert* v. *Louisiana,* 272 U.S. 312, 316; *Erie R.R.* v. *Tompkins,* 304 U.S. 64; Rules of Decisions Act, 28 U.S.C. 725, now section 1652.

authoritative construction. *Railroad Commission* v. *Pullman Co.*, 312 U.S. 496; *Chicago* v. *Fieldcrest Dairies*, 316 U.S. 168; *Spector Motor Co.* v. *McLaughlin*, 323 U.S. 101; *A. F. of L.* v. *Watson*, 327 U.S. 582, 598. The lower court erred when it held that it had satisfied the rule of these cases because the construction of the local statute, there directed to be awaited, here had occurred (R. 477). The rule of *Railroad Commission* v. *Pullman Co.* is not satisfied by awaiting state court construction only to ignore it. The purpose of obtaining the state court's construction of the state law of course is that the constitutionality of the statute may be judged in the light of that construction. As succinctly stated by the Supreme Court of the United States in *Winters* v. *New York*, 333 U.S. 507, 514:

> "* * * The interpretation by the Court of Appeals [of New York] puts these words in the statute as definitely as if it had been so amended by the legislature."

The *Winters* case was a first amendment case. There are many other instances where it has been asserted that a statute was so broad as to infringe first amendment rights, and the authoritative construction of the statute by the state court has been held decisive.[26] When *Thornhill* v. *Alabama*, 310 U.S. 88, cited by the court below (R. 459-460), is compared with *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 572-573, a later opinion written by the same judge (Mr. Justice Murphy) also in a first amendment case, it is clear that the criterion of the restraint imposed by a statute is *the construction authoritatively put upon it*. Thus in the *Chaplinsky* case, the court refers to and upholds "the limited scope of the statute as thus construed" (P. 573). The *Thornhill* case is one of a line of cases holding that

[26] *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 572-573; *Terminello* v. *Chicago*, 337 U.S. 1, 4; *Cox* v. *New Hampshire*, 312 U.S. 569, 575; *Kovacs* v. *Cooper*, 336 U.S. 77 (when compared with *Saia* v. *New York*, 334 U.S. 558).

where a person has been convicted upon a record which demonstrates a too broad construction of the statute, so that his punishment may be attributable to acts which under the Constitution cannot be punished, the presence in the record of evidence of unlawful acts which under the Constitution may be punished will not save the judgment. Other such cases are *Thomas* v. *Collins,* 323 U.S. 516, 541; *Stromberg* v. *California,* 283 U.S. 359, 367.

The Supreme Court of the United States will not consider a contention that a too broad statute imposes a restraint upon first amendment rights in the absence of an authoritative application of the statute. *Federation of Labor* v. *McAdory,* 325 U.S. 450, 457-460; *Rescue Army* v. *Municipal Court,* 331 U.S. 459, 568-575; *Musser* v. *Utah,* 333 U.S. 95; *United Public Workers* v. *Mitchell,* 330 U.S. 75 (contention of restraint on free speech summarized p. 83, note 12, refusal to consider the contention pp. 90-91); *United States* v. *Petrillo,* 332 U.S. 1, 9-10. This is referred to by the Supreme Court in the *Rescue Army* case as "a policy of strict necessity in disposing of constitutional issues."

Same rules apply in Hawaii. The same deference to the local courts in matters of statutory interpretation is required of a federal court sitting in a territory. *DeCastro* v. *Board of Commissioners,* 322 U.S. 451, 459; *Stainback* v. *Mo Hock Ke Lok Po, supra,* 336 U.S. 368, 383. The holding of this Court (172 F. 2d at pp. 178-179) that the relations between the territorial and federal court are the same as between state and federal courts and that criminal laws of the Territory and prosecutions thereunder are entitled to the same protection as state prosecutions, is conclusive. Hence the court below erred when it held it to be within its authority to rule that the interpretation of the

statute by the Supreme Court of Hawaii was erroneous (R. 483).

The lower court stated "we do not ignore the fact that it is our duty to follow the interpretation of constitutionality imposed on the statute by the Supreme Court of Hawaii unless, in our opinion, that interpretation is clearly erroneous" (R. 483). The lower court there had reference to the appellate jurisdiction of this Court,[27] and it failed to recognize that it was not an appellate court. Moreover, when appellate jurisdiction exists over the interpretation of territorial statutes this is a very narrow field, as this Court repeatedly has recognized. In usurping appellate jurisdiction the trial court paid mere lip service to its limitations (R. 461, 476-477, 483), for it failed to recognize that disagreement with the Supreme Court's interpretation would not stamp that interpretation as manifestly erroneous. *Bonet v. Texas Co.*, 308 U.S. 463, 471 (note 27, appendix p. 173).

C.

The unlawful assembly and riot act as construed by the Supreme Court of Hawaii was valid.

The statute codifies common law offenses; dispersal of unlawful assemblies and riots is not involved. It is important to keep in mind the distinction between (1) the common law offense of riot, (2) the duty of officers to disperse unlawful assemblies and riots, and (3) the consequence of failure to disperse upon an order to do so. The latter two matters were the subject of the English statute of George I, making it a capital offense for an unlawful assembly of twelve or more persons not to disperse after a proclamation ordering them to do so. This English statute was of great concern to the court below (R. 444) but it was not involved. Moreover, the Hawaiian statute does not permit an assembly to be dispersed unless there is a

[27] Appendix, pp. 172-174.

where a person has been convicted upon a record which demonstrates a too broad construction of the statute, so that his punishment may be attributable to acts which under the Constitution cannot be punished, the presence in the record of evidence of unlawful acts which under the Constitution may be punished will not save the judgment. Other such cases are *Thomas* v. *Collins,* 323 U.S. 516, 541; *Stromberg* v. *California,* 283 U.S. 359, 367.

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C.

The unlawful assembly and riot act as construed by the Supreme Court of Hawaii was valid.

The statute codifies common law offenses; dispersal of unlawful assemblies and riots is not involved. It is important to keep in mind the distinction between (1) the common law offense of riot, (2) the duty of officers to disperse unlawful assemblies and riots, and (3) the consequence of failure to disperse upon an order to do so. The latter two matters were the subject of the English statute of George I, making it a capital offense for an unlawful assembly of twelve or more persons not to disperse after a proclamation ordering them to do so. This English statute was of great concern to the court below (R. 444) but it was not involved. Moreover, the Hawaiian statute does not permit an assembly to be dispersed unless there is a

[27] Appendix, pp. 172-174.

clear and present danger of breach of the peace; the statute thereby conforms to the American view as to constitutional requirements.[28]

The common law of riot was so extensively reviewed by this Court in *Salem Mfg. Co.* v. *First American Fire Ins. Co.*, 111 F. 2d 797, 802-805, as to make it unnecessary to quote from the various works on criminal law. The following is from the charge to the jury in *People* v. *Judson*, 11 Daly (N.Y. 1, 82:

> "* * * A riot may be defined to be a tumultous disturbance of the public peace by three or more persons assembled together of their own authority, mutually assisting each other against all who oppose them, and engaged in executing some design in a violent and turbulent manner, to the terror and alarm of by-standers or the neighborhood. The offenses comprehended within this general definition constitute three kinds of offenses—an unlawful assembly, a rout, and a riot. The unlawful assembly is where the parties come together with the intent before stated; rout is where they move forward to the execution of their design, and the riot takes place when they begin with force and violence to execute their design.[29] Distinguishable from either of these offenses, is the offense which is denominated an affray. An affray is when persons come together without a premeditated design to disturb the peace, and suddenly break out into a quarrel among themselves; and it is contradistinguished from a riot, by being more of a private nature. * * *"

Blackstone[30] explains that at common law such offenses were committed by three or more acting together, with a

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[28] See note 22b, Appendix, pp. 170-172.

[29] Section 11571 of the Hawaii law provides that "a riot is where three or more being in unlawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others."

[30] Blackstone's Commentaries, Book IV, pp. 142-143, 146 (from 2 Cooley's Blackstone, pp. 1318, 1321-1322; 2 Jones' Blackstone, pp. 2326, 2330-2331).

punishment by fine or imprisonment. But if the assembly was to the number of twelve or more, then the statute of George I could be invoked. As above noted that statute made it a capital offense not to disperse after a proclamation to disperse, one hour being allowed for the purpose. Blackstone explains that this statute of George I was one of a long line of such statutes.

No order of dispersal was necessary to make out the common law offense.[31] The Supreme Court of Hawaii so held in the *Kaholokula* case (37 Haw. at p. 639).

The common law offense of riot is codified by sections 11570-11575 of the Hawaiian statute, sections 11578-11580 being the penalty provisions. (Compare similar statutes in the states within this judicial circuit.)[32] The second matter above mentioned, i.e., the statutory duty of officers to disperse unlawful assemblies and riots, is covered by sections 11581-11584 of the Hawaiian statute. (Compare similar statutes in the states within this circuit.)[33] The third matter above mentioned, i.e., the consequence of failure to disperse upon an order to do so, is covered by sections 11576-11577 of the Hawaiian statute. (Compare similar statutes in the states within this circuit.)[34]

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[31] *State* v. *Russell,* 45 N.H. 83; *Rex* v. *Fursey,* 6 Car. & P. 80, 172 Eng. Rep. 1155; 24 Am. & Eng. Encyc. of Law, 2d Ed., p. 976.

[32] See in appendix VI, pp. 201-213, the following: *Arizona,* secs. 43-1303, 43-1304; *California,* secs. 404-408; *Idaho,* secs. 17-3001, 17-3002, 17-3003, 17-3004, 17-3005; *Montana,* secs. 11285-11289; *Nevada,* secs. 10278, 10279; *Oregon,* secs. 23-801, 23-802; *Washington,* secs. 9078, 9079, 9080, 9082, 9083.

[33] Appendix VI includes such provisions in part, but supplementary provisions, such as for calling out the militia and defining what is justifiable homicide, have not been included. See in appendix VI, pp. 201-213, the following: *Arizona,* secs. 43-1305, 45-109; *California,* secs. 410, 726, 727; *Idaho,* secs. 17-3007, 19-224, 19-225; *Montana,* secs. 11291, 11658, 11659; *Nevada,* secs. 4836, 4837, 4838; *Oregon,* sec. 23-806; *Washington,* sec. 1799.

[34] See in appendix VI, pp. 201-213, the following: *Arizona,* sec. 43-1304; *California,* sec. 409; *Idaho,* sec. 17-3006; *Montana,* sec. 11290; *Oregon,* sec. 23-806; *Washington,* sec. 9081.

That statutory provisions codifying the common law offenses of unlawful assembly and riot are separable from dispersal provisions and those relating to the consequence of failure to disperse, is clear from their separate origins. Such statutes often appear in different chapters. (Compare the statutes cited in footnote 32 with those cited in footnotes 33 and 34.) The Supreme Court of Hawaii in the *Kaholokula* case held that the validity or invalidity of the dispersal provisions did not affect the remainder (37 Haw. 625, 633, 639). This decision on separability of the statute was binding on the federal court, being another of the statutory construction questions, hence a local issue. *Rescue Army* v. *Municipal Court, supra,* 331 U.S. 549, 573-574; *Skinner* v. *Oklahoma,* 316 U.S. 535, 543; 11 Am. Jur. 840, sec. 153.

The offense involved in these cases is riot, not failure to disperse upon an order to do so.[35] A federal court is not concerned with the validity of a portion of a criminal statute deemed independent by the state court and not involved in the case before the federal court. *Chaplinsky* v. *New Hamphire, supra,* 315 U.S. 568, 572; *Watson* v. *Buck, supra,* 313 U.S. 387, 397; *Ex parte Kinnebrew,* 35 Fed. 52, 57.

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[35] The indictment returned in Criminal No. 2365 and considered by the Supreme Court of Hawaii was for riot. In its present form the count for riot (N. 12301, R. 29-32) charges that the defendants therein named with divers other persons joined together in assaulting and inflicting or attempting to inflict corporal injuries upon five named persons (the five men trying to enter the mill at Paia) which with other conduct there described did tend and intend to intimidate and strike terror into them. [An attempt is some act done toward committing an offense and in part execution of the intent to commit it, section 10610, Revised Laws of Hawaii 1945.] Other allegations setting forth the various elements of the offense of riot are there made.

While in Criminal Nos. 2412, 2413, and 2419 the parties are held under commitments for grand jury action and the grand jury has not proceeded by reason of the temporary restraining order and the decree below, the criminal complaints in each instance allege facts which would constitute a riot, and the commitments were on that

The court below ignored the common law offense; the court thought the statute of George I was the sum total of the law on the subject. The court then took alarm by reason of a footnote in the case of *Bridges* v. *California,* 314 U.S. 252, 265, footnote 9 (R. 458-459). From this footnote the court seems to have reasoned that the existence of an assembly never can be an element in a criminal statute. Of course the footnote in the *Bridges* case had no such meaning, as is clear from *Cole* v. *Arkansas,* decided by the Supreme Court of the United States on December 5, 1949, 338 U.S. 345, 94 L. Ed. Adv. Op. 139. The footnote in the *Bridges* case very evidently had reference to the abuses of the statute of George I in England, whereby the statute came to be used for the dissolving of assemblies that had met for the consideration of grievances against the crown. The Hawaiian statute guarded against such abuses by providing that an assembly was not unlawful unless what occurred struck terror or tended to strike terror into others.[36] But in any event, the dispersal of an assembly is not here involved.

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theory (R. 90, 95, 138, 322). The complaints allege that the defendants therein named with divers other persons joined together in assaulting, beating, striking, and inflicting corporal injuries upon named persons (Jacob Kalua in Criminal No. 2412, and certain of the persons working at Kaumalapau Wharf in Criminal Nos. 2413 and 2419) which with other conduct there described did tend and intend to strike terror into said named persons. Other allegations setting forth the various elements of the offense of riot are there made.

There were no orders to disperse given. The statute required a command "in the name of the Territory" (Section 11581); no such formal command was given. *People* v. *Sklar,* 111 Cal. App. 776, 292 Pac. 1068. No orders to disperse are charged in the criminal charges. Therefore it is unnecessary to consider whether the plaintiffs could be prosecuted merely for failure to disperse upon an order to do so if not otherwise guilty.

[36] How the abuses of the statute of George I came about and how they are not possible under the Hawaiian statute, is explained in note 22b, appendix, pp. 170-172, where the authorities are cited.

The terms of the statute being common law terms, the statute affords an ascertainable standard of guilt. Since the statute codifies common law offenses, the Supreme Court of Hawaii obviously was correct in its holding that the terms of the statute were common law terms. The employment in the statute of common law terms removes from the case any contention that the statute does not contain an ascertainable standard of guilt. The describing of crimes by words well understood in the criminal law is "permissible uncertainty." *Territory* v. *Kaholokula, supra,* 37 Haw. 625, 632-633; *Kovacs* v. *Cooper, supra,* 336 U.S. 77, 80; *Nash* v. *United States,* 229 U.S. 373, 376, as construed in *Connally* v. *General Construction Co.,* 269 U.S. 385, 391; *Crawford* v. *United States,* 30 App. D.C. 1. Thus this case is distinguishable from such cases as *Lanzetta* v. *New Jersey,* 306 U.S. 451, 455, where the meaning was not derivable from the common law as there pointed out.

The requirement that what occurs must strike terror or tend to strike terror into others, as demonstrative of a clear and present danger of breach of the peace. The phrase "striking terror or tending to strike terror" used throughout the Hawaiian statute, was one of those deriving its meaning from the common law (37 Haw. at p. 32). The Supreme Court of Hawaii placed great emphasis on this element of the offense, holding that "acts which strike or tend to strike terror into others are essential ingredients of the offense of riot" and must be averred in the indictment (37 Haw. at p. 642). The court further said:

> "* * * Speech occasioned by disturbance, tumult and violence, which accompanies an act or the actual beginning of an act striking terror or tending to strike terror into others, transcends free speech and peaceable assembly" (37 Haw. at p. 631).
>
> "* * * To say that the unlawful assembly and riot statutes nullify and destroy the substance of the right to picket is tantamount to saying that picketing may

> with impunity be unlawful to the extent defined by section 11570 and the participants may, with equal impunity, join in doing or actually beginning to do an act with tumult and violence and striking or tending to strike terror into others. The right asserted is peaceful picketing and not riot as defined by section 11571 * * *" (37 Haw. at p. 636).

Under this construction of the law the offense could occur only if there was a breach of the peace or clear and present danger thereof. There must be overt acts "of such a nature as to inspire well grounded fear in persons of reasonable firmness and courage of a * * * breach of the peace." *State* v. *Butterworth,* 104 N.J.L. 579, 142 Atl. 57; *State* v. *Wooldridge,* 129 W.Va. 448, 40 S.E. 2d 899; *Commonwealth* v. *Paul,* 145 Pa. Super. 548, 21 A 2d 421; *People* v. *Kerrick,* 86 Cal. App. 542, 261 Pac. 756, 759- 760; *Salem Mfg. Co.* v. *First American Fire Ins. Co.,* supra, 111 F. 2d 797, 805; Annotation, 58 A.L.R. 751. The Supreme Court of the United States has always supported this reasonable man test as valid. *Chaplinsky* v. *New Hampshire, supra,* 315 U.S. at p. 573; *Nash* v. *United States,* supra, 229 U.S. at p. 377.

Since the statute applies only when there is a clear and present danger of breach of the peace, beyond doubt it prescribes a punishable offense. *Cantwell* v. *Connecticut,* 310 U.S. 296 at p. 308 and compare p. 310, the court distinguishing between an immediate threat to the public peace and the mere airing of views arousing animosity in others. The same distinction is made in *Chaplinsky* v. *New Hampshire,* supra, holding punishable the use of derisive, fighting words; compare *Terminiello* v. *Chicago,* supra, *Hague* v. *C.I.O.,* supra, and *Sellers* v. *Johnson,* 163 F. 2d 877, cert. den. 332 U.S. 851, holding that speech cannot be restrained merely because it arouses public resentment, if it falls short of an immediate threat to the public peace.

The court below, in its holding that the test laid down by the words "striking terror or tending to strike terror into others" was "purely subjective," "the test of reasonableness is absent from the statute" (R. 453), showed lack of knowledge of the principles of law involved. The court's error is illustrative of the wisdom of the rule leaving the interpretation of state laws to the state courts. It had not even been disputed that the Supreme Court of Hawaii interpreted the statute by reference to the common law test, which contemplated whether a man of reasonable firmness would be terrified (R. 1104).

Other points of disagreement between the court below and the Hawaiian courts[37] likewise concern the meaning of the statute, which it was the lower court's duty to leave to the Hawaiian courts.

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[37] The court below said that section 11574 seemed to intend the effect that a lawful meeting performing lawful acts would be a riot if any terror was excited (R. 456). If the court below had consulted the common law the meaning would be clear. The section has reference to two things, a change in the character of an assembly and the performance of a lawful act by unlawful means. As to the first matter covered by the section see *Blakeman* v. *City of Wichita*, 93 Kan. 385, 144 Pac. 816; *People* v. *Bundte*, 87 Cal. App. 2d 735, 197 P. 2d 823, cert. denied 337 U.S. 915. As to the second matter covered by this section see 2 Wharton's Criminal Law, 12th ed., Sec. 1863.

Section 11572, to which the court below refers (R. 453) is explanatory, as held by the Supreme Court of Hawaii (37 Haw. at p. 628). The lower court's erroneous treatment of this section was due to its previous error with respect to the significance of the words "striking terror or tending to strike terror into others."

The reference (R. 453-454) to Judge Wirtz's oral opinion ex parte in the injunction matter is of no apparent relevance, since if it amounted to a construction of the statute by Judge Wirtz it nevertheless preceded the Supreme Court's opinion, which the circuit judge would follow. In any event Judge Wirtz obviously was not construing the Unlawful Assembly and Riot Act as authorizing an injunction. The judge had before him an ex parte showing justifying the order. (Record in this Court in No. 11568, pp. 80-100). Of course the union could have applied for modification of the order. The whole matter was so trivial that the lower court rejected it when offered (R. 1295-1297), then took judicial notice of it.

The test of accountability. This branch of the case has been decisively determined by the recent and final decision of the Supreme Court of the United States in *Cole* v. *Arkansas,* 338 U.S. 345, 94 L.Ed Adv. Op. 139 (December 5, 1949). Before taking up that case we again are obliged to consider the construction of the statute.

The Supreme Court of Hawaii considered the contentions presented by Kaholokula et al as (1) the right to do in concert what can be done singly, that is, picketing, either in small or large numbers and (2) the right not to be held accountable for unlawful acts of other persons. As to these contentions the court said:

> "* * * Appellants argue that since there is a common purpose in picketing, the unlawful act of one or more individuals can convert the picket assembly into an unlawful assembly and hence the right not to be held accountable for such unlawful acts is invaded by the riot and unlawful assembly statutes. But this is not so. An analysis of the hypothesis suggested and the law applicable demonstrate its fallacy. The right to peaceful picketing is unquestioned. If an assembly has for its purpose peaceful picketing but lawlessness occurs not amounting to unlawful assembly as defined by section 11570, accountability therefor depends on whether the person merely present aided, incited, encouraged or countenanced those guilty of lawlessness. If so, he is deemed a principal therein [R. L. H. 1945, s. 10670]. If these elements are not present, he is not accountable for the unlawful acts of others. If the lawlessness assumes the proportions of an unlawful assembly or riot, accountability therefor by a person merely present depends upon whether that person promoted the same or aided, abetted, encouraged or countenanced the parties concerned therein by words, signs, acts or otherwise. If so, he is deemed a principal [R. L. H. 1945, s. 11575]. If not, he is not accountable for the riotous acts of others * * *" (37 Haw. at p. 637).

As to this, the lower court said that the verb "countenance" signified that "anyone whose mien or appearance was deemed to favor the assembly would himself be guilty as a principal" (R. 456). Of course, the term is not so used in jurisprudence.[38] The lower court was assuming that proper instructions would not be given to the jury at the proper time.

The lower court further took exception to section 11573, dealing with concurrence in intent (R. 454-455). This section is explanatory of one element of the offense of riot. The lower court held that only a violent tumultuous act could join the actor in the common unlawful intent to maintain a riot, and that section 11573 permits guilt to be implied "by the mere presence at the scene of any person" (R. 455). The Supreme Court of Hawaii, on the other hand, had said that mere presence was not enough to convict any person; to be accountable he must have promoted or abetted the lawless acts, as more fully explained in the portion of the Supreme Court's opinion above quoted. The lower court's disagreement was based upon its insistence that for a person to be an accountable participant, as distinguished from being merely present, he must himself have perpetrated a violent, tumultuous act.

Whether the right of assembly confers immunity of a member of the assembly unless he actually himself perpetrates acts of force or violence, or whether he is accountable if he is present and furthers a concerted purpose to do those acts, is the issue involved. This question was decisively determined in *Cole* v. *Arkansas, supra,* decided by the Supreme Court of the United States on December 5, 1949, 338 U.S. 345, 94 L.Ed. Adv. Op. 139. The opinion holds that furtherance of a concerted unlawful purpose is enough to make one accountable for the acts of an unlawful assembly. This was deemed elementary by the Supreme

[38] *Cooper* v. *Johnson,* 81 Mo. 483, 489.

Court of the United States. The substantial question in the *Cole* case was whether the state courts had so shifted their construction of the statute between the trial and the appellate review as to convict the petitioners on an issue not made before the jury. The earlier *Cole* case (333 U.S. 196) had held that could not be done. The latest opinion holds that it was not done.

The Arkansas statute involved in the *Cole* case and its construction by the Arkansas court[39] are stated by the Supreme Court of the United States as follows:

> "Section 2 of Act 193, Acts of Arkansas 1943, provides:
>
> > " 'It shall be unlawful for any person acting in concert with one or more other persons to assemble at or near any place where a "labor dispute" exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation, *or for any person acting either by himself or as a member of any group or organization, or acting in concert with one or more other persons to promote, encourage or aid any such unlawful assemblage. . . .*' (Italics supplied.)
>
> "In the opinion under review, the Supreme Court of Arkansas has indicated that as to one charged with a violation of the italicized portion, the statute requires that the accused aid the assemblage with the intention that force and violence would be used to prevent a person from working. * * *
>
> "* * * the appellate court spelled out what is implicit in the instructions of the trial court, and both were agreed that the statute authorized no conviction for a mere presence in an assemblage at which unplanned and unconcerted violence was precipitated by another."

[39] *Cole and Jones* v. *State,* 214 Ark. 387, 216 S.W. 2d 402.

The question of conflict between the Arkansas statute as so construed and the right of assembly was summarily disposed of by the court as follows:

> "What we have already said disposes of the contention that this Act as applied to petitioners abridges freedom of assembly. For this argument, too, rests on the assumption that this Act penalizes for mere presence in a gathering where violence occurs. As we have pointed out, the statutory text does not so read, the charge of the trial court expressly negatived this construction * * *.
>
> "Accordingly, we are not called upon to decide whether a state has power to incriminate by his mere presence an innocent member of a group when some individual without his encouragement or concert commits an act of violence. It will be time enough to review such a question as that when it is asked by one who occupies such a status. * * *
>
> "Certainly the Act before us does not penalize the promotion, encouragement, or furtherance of peaceful assembly at or near any place where a labor dispute exists, nor does it infringe the right of expression of views in any labor dispute.
>
> "Quite another question is involved when one is convicted of promoting, encouraging and aiding an assemblage the purpose of which is to wreak violence. Such an assemblage has been denominated unlawful by the Arkansas legislature, and it is no abridgment of free speech or assembly for the criminal sanctions of the state to fasten themselves upon one who has actively and consciously assisted therein."

The *Cole* case like the Territory's criminal cases (Statement of the Case supra, pp. 17-20) was one where planned violence occurred at an assemblage. Under the holding of the court below (R. 455) one who was present in the assemblage promoting a common unlawful purpose to maintain a riot could not be punished unless he himself perpetrated a violent tumultuous act. The facts in the *Cole*

case demonstrate the error of this holding. As to the petitioner Cole the only evidence was that he was present at a discussion held the morning of the day of the occurrence, at which it was agreed to whip employees at the mill if they didn't talk right; that he afterward was present at the mill carrying a club or walking stick, and that he told one of the employees leaving the mill to go ahead, that they were not after him. This was prior to the fight. Jones gave the signal that started the fight upon the exit of the awaited employee, but it does not appear that Cole did any specific act.[40] It was not found that Cole joined in the fight. Other recent cases that are enlightening are *People* v. *Bundte,* 87 Cal. App. 2d 735, 197 P. 2d 823, 832, cert. denied 337 U.S. 915, and *People* v. *Moore,* 87 Cal. App. 2d 753, 197 P. 2d 835, 838, cert. denied 337 U.S. 915.

In *Whitney* v. *California,* 274 U.S. 357, 366-367, it was contended that the California statute there involved, as construed and applied, penalized the defendant for her mere attendance at an assemblage (a convention) at which there subsequently occurred unlawful acts of others unforeseen and not joined in by her, and without a showing of specific intent on her part to join in the forbidden purpose. The court held this was a question going to the weight of the evidence, not a constitutional question. So here, since the Hawaii statute does not penalize mere presence of any person, the question is one of fact to be judged in the light of (1) the charges, (2) the evidence, (3) the instructions to the jury, (4) review by the Supreme Court of Hawaii of such convictions as may result, and (5) federal court review of the constitutionality of such convictions. The prejudgment of such questions in equity is unparalleled. The precise reason for the "policy of strict necessity in disposing of constitutional issues" to which we

[40] See part II of the opinion of the state court (214 Ark. 387, 216 S.W. 2d 402) which was under review.

have referred (supra, p. 56), is to avoid conjecturing up a multitude of difficulties in the segregation of the guilty from the innocent, questions which it is the business of the criminal courts and juries to resolve, and which might never reach the constitutional level. See *United States* v. *Petrillo, supra,* 332 U.S. 1, 9-12.

The maximum punishment allowed by the statute. Inasmuch as the maximum punishment was reduced by the 1949 legislature to two years and this part of the 1949 amendment was made retroactive, and inasmuch as the matter of maximum punishment was not treated by the court below as a constitutional issue, our discussion of the matter will be brief. The effect upon this provision of other statutes of the Territory is reviewed in a note.[41]

Either the twenty years' maximum was a "cruel and unusual punishment" within the meaning of the Eighth Amendment or it was not. It was not assailed as such by the pleadings herein or in the *Kaholokula* case in the Supreme Court of Hawaii. In argument counsel for the plaintiffs admitted that it did not constitute cruel and unusual punishment (R. 1103). The court did not hold it to be such.

The reason for the failure of the plaintiffs to attack the penalty provision is obvious. It was inserted by a 1929 amendment, in a statute which since 1850 had prescribed a maximum penalty of five years. If the amendatory statute of 1929 so increasing the punishment was invalid, the original statute stood as it read before that amendment. (1 Sutherland Statutory Construction 3d ed. sec. 1937; *Frost* v. *Corporation Commission,* 278 U.S. 515, 525.) Thus a direct attack on the penalty provision could not lead to the striking down of the whole statute, which was plaintiffs' object.

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[41] Appendix, pp. 174-175.

The reference to Chaffee's Free Speech in the United States, page 10 (R. 461, note 69) has no bearing. The point made by the author is that the First Amendment protects against punishment for speech one is entitled to make. This is a truism. It is equally well settled that the First Amendment does not protect against punishment for speech one is not entitled to make. *Winters* v. *New York, supra,* 333 U.S. 507, 510; *Gitlow* v. *New York,* 268 U.S. 652, 666; *Fox* v. *Washington,* 236 U.S. 273.

IV.

THE COURT ERRED IN INVALIDATING THE CONSPIRACY STATUTE.

A.

Origin of the statute; 1949 amendments.

The history of the statute is set forth in the appendix.[42] The statute as it stood at the time of these cases is printed in appendix IV, pp. 195-198, and references are to the sections there set forth.

By Act 10 of the Special Session Laws of Hawaii 1949 the statute was completely amended. This Act 10 is set out as appendix V, pp. 198-200. Section 7 of said Act 10 provides that it shall not affect the liability of any person to prosecution and punishment for the offense of conspiracy committed prior to the effective date of that Act (August 29, 1949) and that all such offenses may be prosecuted and punished the same as if said Act had not been enacted.

B.

The criminal case should have been allowed to proceed under the conspiracy statute, since at least a portion of the statute was valid and independently sustainable.

In the second indictment in Criminal No. 2365 there was

[42] Appendix, p. 175.

a second count[43] for conspiracy, third degree, a misdemeanor. The case is No. 12301. The conspiracy statute was not mentioned in the pleadings in No. 12300. The court struck the statute down in toto (R. 467, No. 12301, R. 95) and enjoined its use in Criminal No. 2365 (No. 12301, R. 95-96).

The court confined its objections (R. 461-467) to the last clause of section 11120 which relates to a conspiracy "* * * to do what plainly and directly tends to excite or occasion offense, or what is obviously and directly wrongfully injurious to another." But by the first clause of section 11120 it was provided that "a conspiracy is a malicious or fraudulent combination or mutual undertaking or concerting together of two or more, to commit any offense or instigate any one thereto." This last quoted and obviously constitutional provision was involved, as the court knew and had not overlooked (R. 401). The indictment averred a conspiracy to commit acts of violence against and inflict corporal injuries upon five named persons (No. 12301, R. 32-34), i.e., a conspiracy to commit the offense of assault and battery.[44] True, the indictment also referred to the concerting together of the defendants in Criminal No. 2365 to prevent said five persons from engaging in their employment (No. 12301, R. 33-34), but this part of the indictment was not necessary to the charge of conspiracy to commit assault and battery.

Irrespective of the constitutionality of the last clause of section 11120 the first clause clearly was complete in itself and constitutional. Conspiracy to commit an offense or

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[43] This was pleading in the alternative to meet the proof (No. 12301, R. 32) as allowed by section 10804 of the Revised Laws of Hawaii 1945.

[44] The court erroneously referred at R. 401 to "conspiracy to commit a felony third degree." This is a legal impossibility. Conspiracy to commit a felony would be first degree. Correctly, conspiracy to commit a misdemeanor, i.e., assault and battery, was involved. This falls into the third degree category. Such a conspiracy is a misdemeanor (sections 11128 and 11130).

to instigate an offense involves no uncertainty; the court conceded that the term "offense" was clear (R. 464-465). The provision is not directed against an assemblage as such, or against the subject matter of a speech; it is directed against the undertaking, however or whenever arrived at, to do specific unlawful acts or to instigate others to specific unlawful acts. The matter is made clear by *Fox* v. *State of Washington, supra,* 236 U.S. 273, and by comparison of *Whitney* v. *California, supra,* 274 U.S. 357 with *De Jonge* v. *Oregon,* 299 U.S. 353, commenting on the *Whitney* case at page 363. Surely the court cannot have believed that the right of union members to concert together for lawful ends includes the right to concert together for unlawful ends. See *International Union U.A.W.A.* v. *Wisconsin Board,* 336 U.S. 245, 257-258; *Lincoln Federal Labor Union* v. *Northwestern Iron and Metal Co.,* 335 U.S. 525, 529-531; *Cole* v. *Arkansas, supra,* decided December 5, 1949.

We have shown that when a state court deems the validity of the first portion of a criminal statute to be independent of the validity of another portion, it is the duty of a federal court to so consider it, and that when a state court has not passed on the separability of the portions of a statute it is the duty of a federal court to permit it to do so, particularly when it is the practice in the state court to uphold independent portions of a statute irrespective of the validity of other portions. *Rescue Army* v. *Municipal Court, Skinner* v. *Oklahoma, Watson* v. *Buck,* 11 Am. Jur. 840; *supra,* p. 60. The first clause of section 11120 obviously was separate and independent of the second clause. Portions of statutes have been upheld in instances by no means as clear. *Ex parte Bell,* 19 Cal. 2d 488, 122 P. 2d 22; *New York Central R. R.* v. *United States,* 212 U.S. 481, 496-497; *Territory* v. *Tam,* 36 Haw. 32, 41-42.

Had there arisen in normal course upon demurrer to

an indictment[45] the question of invalidity of one of several independent portions of a statute involved in the indictment the Supreme Court of Hawaii would not have sustained the demurrer but would have allowed the case to proceed as to the valid portions. *Territory* v. *Tam, supra,* 36 Haw. at pp. 41-42. The Constitution does not forbid this so long as the verdict of the jury rests only on the valid portions. *Stromberg* v. *California, supra,* 283 U.S. 359, 367-368. Thus the lower court, by taking the cases out of their normal course, reached a result different from that which the Supreme Court of Hawaii would have reached, in matters not involving the Constitution. There can be no justification for such treatment.

The court gave no reason for striking down the statute in toto other than to state that the statute "by reason of its vagueness and uncertainty must be held to be unconstitutional in its entirety" (R. 467). But the court had found vagueness and uncertainty only in a separable portion of the statute. Hence the statute could not be struck down in toto, and the prosecution for conspiracy to commit assault and battery could not be enjoined.

As to the separable second clause of the statute, found vague and uncertain by the court, since the 1949 amendments have eliminated it our discussion will be brief. We submit that this clause was capable of a constitutional construction,[46] and that, as to this portion of the statute, the rule of *Railroad Commission* v. *Pullman Co., supra,* should have been applied, but as the court lacked equity jurisdiction (point VI, infra) there was no occasion to hold the case even as to this portion of the statute. *Atlantic Fishermen's Union* v. *Barnes,* 71 F. Supp. 927, 928.

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[45] The *Kaholokula* case in 37 Haw. did not involve the count for conspiracy, which was added in the second indictment.

[46] *Musser* v. *Utah,* 333 U.S. 95, 97; *United States* v. *Petrillo,* 332 U.S. 1, 11; *Screws* v. *United States,* 325 U.S. 91, 96, 101; *Territory* v. *Belliveau,* 24 Haw. 768, 771, cf. *Territory* v. *Hart,* 35 Haw. 188.

V.

PROSECUTION OF THE PENDING CASES UNDER THE RIOT AND CONSPIRACY STATUTES WOULD NOT DENY PLAINTIFFS THE EQUAL PROTECTION OF THE LAWS.

A.

Nature of plaintiffs' claims.

This point has to do with that part of the complaints relating to the denial of equal protection (Statement of the Case, supra, pp. 14-15).

If relevant at all this contention goes to the individual plaintiffs' defense to the criminal prosecutions pending against them. We will show that no injunction was issued against further prosecutions and that no further prosecutions are involved (point VII, infra). This then is an attempt to present in equity, pleas and defenses to criminal charges, over which equity has no jurisdiction, as submitted in point VI. But at this point the brief is devoted to showing that in any event, irrespective of the forum for the presentation of such defense, plaintiffs did not present a good defense.

B.

Essential elements of a claim of denial of equal protection in the administration of criminal laws.

Applicability of equal protection clause in the territories. At the outset it must be noted that the Fifth Amendment contains no equal protection clause[47] and the Fourteenth Amendment does not apply to territories.[48] However, the

[47] *Hirabayashi* v. *United States,* 320 U.S. 81, 100.

[48] It never has been decided that the Fourteenth Amendment applies to the Territory of Hawaii, and only the Fifth Amendment has been applied. *Alaska* v. *Troy,* 258 U.S. 101, 66 L.ed. 487; *Farrington* v. *Tokushige,* 273 U.S. 284, 299, 71 L.ed. 646, 651; *In re Yerian,* 35 Haw. 855, aff'd 130 F. 2d 786; *Hawaiian Trust Co.* v. *Smith,* 31 Haw. 196, 201; *Territory* v. *Armstrong,* 28 Haw. 88. The circuit court of appeals of the first circuit has said that:

"* * * It is well settled that the Fourteenth Amendment has no application to territories. * * *"

South Porto Rico Sugar Co. v. *Buscaglia,* 154 F. 2d 96, 101.

Fifth Amendment protects against discrimination by legislative action, and for purposes of argument it will be assumed that it also protects against discrimination by administrative action of a type which the legislature could not have authorized in the first place.[49]

Pertinency of a claim of denial of equal protection in the administration of criminal laws. Even under the equal protection clause, it by no means is clear that a claim of denial of equal protection in the administration of criminal laws can defeat a criminal prosecution[50] and we submit that the better rule is to the contrary. As said in *Thompson* v. *Spear,* 91 F. 2d 430, 434 (C.A. 5th 1937):

> "* * * Any willful or negligent failure to enforce these provisions would constitute a wrong against the sovereign, and be contrary to the public interest; but would, in no instance, enhance the rights of the wrongdoers. Wholesale lawlessness does not give a citizen the right to proclaim a suspension of the law and to proceed himself to violate it; if he attempts to do so, he is clearly outside the protection of a court of equity, into which he must come with clean hands. * * *"

Essential elements of a claim of denial of equal protection in the administration of laws. The leading case on denial of equal protection through administrative action is *Snowden* v. *Hughes,* 321 U.S. 1, a case not involving administration of criminal laws. The court held the com-

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[49] See *Hirabayashi* v. *United States, supra; United States* v. *Josephson,* 165 F. 2d 82, 92 (C.A. 2d 1948) cert. denied 333 U.S. 838, 858, 335 U.S. 899. *Snowden* v. *Hughes,* 321 U.S. 1, 11, holds that even under the equal protection clause the test of discrimination by administrative action is whether it is of a type which the legislature could not have authorized in the first place.

[50] *Buxbom* v. *City of Riverside,* 29 F. Supp. 3, 8 (S.D. Cal. 1939), decision by Judge Yankwich, *Jackie Cab Co.* v. *Chicago Park District,* 366 Ill. 474, 9 N.E. 2d 213 (1937), *People* v. *Montgomery,* 47 Cal. App. 2d 1, 117 P. 2d 437, all distinguishing *Yick Wo* v. *Hopkins,* 118 U.S. 356.

plaint insufficient in its failure to allege facts tending to show an intentional or purposeful discrimination between persons or classes; this could not be supplied by the epithets "willful," "malicious," "unequal," "unjust," "oppressive," employed in the complaint.

What is essential to prove an intentional or purposeful discrimination in the administration of criminal laws is established by *Ah Sin* v. *Wittman,* 198 U.S. 500, 507-508. It was alleged that an ordinance was enforced solely and exclusively against persons of the Chinese race, in denial of the equal protection of the laws, this contention being based on *Yick Wo* v. *Hopkins,* 118 U.S. 356. This contention was held unsupported on the ground:

> "* * * There is no averment that the conditions and practices to which the ordinance was directed did not exist exclusively among the Chinese, or that there were other offenders against the ordinance than the Chinese as to whom it was not enforced. *No latitude of intention should be indulged in a case like this.* There should be certainty to every intent." (198 U.S. at pp. 507-508, italics added.)

Other cases considering the contention of denial of equal protection in the administration of criminal laws all have held that a showing of enforcement exclusively against persons of one class or even that others guilty of the same offense have not been prosecuted, is insufficient.[51] Hence, even assuming that denial of equal protection can be asserted against a criminal prosecution, it must be shown

[51] *Buxbom* v. *City of Riverside, supra,* 29 F. Supp. 3, 8; *Boynton* v. *Fox West Coast Theatres,* 60 F. 2d 851 (C.A. 10th 1932); *Broad-Grace Arcade Corp.* v. *Bright,* 48 F. 2d 348 (E.D. Va. 1931) affirmed 284 U.S. 588; *Grell* v. *United States,* 112 F. 2d 861 (C.A. 8th 1940); *Saunders* v. *Lowry,* 58 F. 2d 158 (C.A. 5th 1932); *Barsky* v. *United States,* 167 F. 2d 241, 251, App. D.C. 1948, cert. denied 334 U.S. 843; *Jackie Cab Co.* v. *Chicago Park District, supra,* 366 Ill. 474, 9 N.E. 2d. 213, 216; *Cone* v. *State,* 184 Ga. 316, 191 S.E. 250; *Creash* v. *State,* 131 Fla. 111, 179 So. 149.

(1) that the law has been invoked exclusively against persons of one class, (2) that *other classes of persons are guilty of comparable offenses and have not been prosecuted,* and (3) that the fact that one class of persons has been prosecuted and other classes of persons equally guilty have not, is due to intentional and purposeful discrimination without valid reason.

C.

The facts in these cases.

The court made much of the fact that in the experience of deputy county attorney Crockett, covering thirty years in the county of Maui, "except for the present cases, there was only one case prosecuted in the county of Maui for unlawful assembly, and that grew out of an alleged kidnapping that took place during a labor dispute" (R. 1559-1560, Opinion, R. 411-412). This evidence was admitted over the objection that a foundation should be laid by showing comparable incidents that did not grow out of a labor dispute (R. 1559). The receipt and use of this evidence, in the manner it was used by the court, was error.

By stretching this evidence lengthwise to cover not only Mr. Crockett's experience of thirty years but also the entire period of fifty years of the Territory's existence, and by further stretching its breadth so as to cover not only the county of Maui but also the entire Territory of Hawaii, the court managed to find "that the unlawful assembly and riot act has been employed by the Territory only against labor groups in labor disputes," during the life of the Territory (R. 411-413, 481-482).[52] The court so enlarged the actual evidence, which concerned thirty years in the county of Maui, by inferring that the evidence was the same as to an earlier additional period of twenty years and as to

[52] It is in the latter portion of the opinion that the finding is enlarged from thirty years to the entire life of the Territory.

all the other counties of the Territory. This was inferred because defendants, who did not have the burden of proof, did not produce evidence covering the additional years and additional counties. Such was manifest error. *Lau Hu Yuen* v. *United States,* 85 F. 2d 327, 329 (C.A. 9th 1936). Prior to the opinion of the court the defendants were not even informed that they had been given the burden of covering the additional years and additional counties.

Like all findings made without evidence this one is erroneous. During the preparation of this brief an application for a pardon brought to the attention of this office a conviction for riot in the fourth judicial circuit, now consolidated with the third circuit. The case was Criminal No. 2005 in the former fourth circuit, part of the island of Hawaii. Fifteen defendants were convicted of riot on pleas of guilty. The facts were that on August 29, 1940, a group of young men went from Hilo to Honomu to seek revenge for a fight between themselves and some Honomu boys that had occurred at a bon dance (Japanese memorial festival) at Honomu on August 24, 1940. On this second occasion the Hilo boys beat up several Honomu boys. The case had nothing to do with a labor dispute.

The finding not only was unsupported by the evidence but there was no relevancy in extending the inquiry to the Territory as a whole. It was the deputy county attorney of Maui who decided what charges should be brought (R. 1676, 1683) and the incidents involved all occurred in that county. Denial of equal protection in the administration of laws is a matter of purposeful discrimination, as we have shown. Hence, in order to bring other counties into the scope of the inquiry, it would be necessary to show that the several county attorneys[53] were acting in concert. This

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[53] The county attorney of Maui is an elective official, and acts as public prosecutor for that county (Section 6266, Revised Laws of Hawaii 1945). In each of the other counties there is an elective

is very well explained in *Boynton* v. *Fox West Coast Theatres, supra,* 60 F. 2d 851, 854.

Purposeful discrimination could not be established through the failure of the attorney general[54] to establish uniformity throughout the Territory in the charges to be used on all occasions, even assuming it was feasible for him to establish such uniformity. Moreover, how an office is handled is individual to the person who occupies it,[55] and there have been many attorneys general during the life of the Territory. The present attorney general, defendant appellant, took office on October 14, 1947 (R. 457).

The precedent which the opinion below seeks to establish is an extremely dangerous one. For example, we have examined all the reported decisions in the state of California in prosecutions for riot.[56] In seven of them the facts appear,[57] and six of those seven cases grew out of labor disputes;[58] the other case (*People* v. *Dunn*) grew out of a

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county attorney acting as public prosecutor, except that in the city and county of Honolulu the public prosecutor is appointed by the mayor with the approval of the board of supervisors (section 6528, Revised Laws of Hawaii 1945), the mayor and board of supervisors being elected.

[54] The attorney general has general control and direction over the county attorneys, including the public prosecutor of the city and county of Honolulu. Sections 6266, 6271, 6528, 6615, 1501, 1502, Revised Laws of Hawaii 1945.

[55] *Ex parte La Prade,* 289 U.S. 444.

[56] *People* v. *Sklar,* 111 Cal. App. 776, 292 Pac. 1068; *People* v. *Bradley,* 137 Cal. App. 225, 30 P. 2d 438; *People* v. *Dunn,* 1 Cal. App. 2d 556, 36 Pac. 2d 1096; *People* v. *Montoya,* 17 Cal. App. 2d 547, 62 P. 2d 383; *People* v. *Yuen,* 32 Cal. App. 2d 151, 89 P. 2d 438, 90 P. 2d 291; *People* v. *Spear,* 32 Cal. App. 2d 165, 89 P. 2d 445; *People* v. *Bundte, supra,* 87 Cal. App. 2d 735, 197 P. 2d 823, cert. denied 337 U.S. 915; *People* v. *Moore, supra,* 87 Cal. App. 2d 753, 197 P. 2d 835, cert. denied 337 U.S. 915.

[57] In the first case cited in the preceding footnote the facts do not appear, but do appear in the remaining seven cases.

[58] See also *People* v. *Anderson,* 117 Cal. App. 763, 1 P. 2d 64, a prosecution for disturbing the peace involving a trade union.

riot at a food depot by applicants for relief. Hawaii had a reported case that did not grow out of a labor dispute (*Republic* v. *Carvalho,* 10 Haw. 446, an unlawful assembly case cited R. 412) but that did not save Hawaii from censure. Evidently upon a mere allegation of denial of equal protection the burden could be placed upon the attorney general of California of digging out unreported cases that did not grow out of labor disputes.

Returning now to the county of Maui and to the thirty years covered by the evidence, and assuming that in that county for that period there was only one previous case in which the unlawful assembly and riot act was invoked and in fact that case grew out of a labor dispute, we proceed to consider the next essential element of proof, that in that county during that period other classes of persons were guilty of comparable offenses and have not been prosecuted under the statute. Plaintiffs in their pleadings undertook to show this and it is an essential element in the proof of a claim of denial of equal protection in the administration of the law, as we have shown. At the trial, the court's rulings showed perfect familiarity with the requirements of proof. Plaintiffs' counsel asked for additional time to show "that there are other incidents when non-union people are involved in serious difficulties where very minor misdemeanor charges are placed against them" (R. 1780). The matter which plaintiffs' counsel wished to go into concerned the city and county of Honolulu (R. 1782). The court ruled:

> "* * * it would seem to me that if you are going to proceed to make proof of the actual status of the handling of criminal cases, misdemeanors, in the Territory of Hawaii, that you would have to do it not by proof of isolated instances, this particular situation, this one to which you refer, but it would have to be more or less done by a presentation of general statistics." (R. 1781-1782.)

The court made no finding on the important question of whether there were other comparable incidents and how they were handled. There was evidence on the part of the defendants that there were no comparable incidents in the county in cases not growing out of labor disputes (R. 1710, covering thirteen years' experience of Police Captain Long (R. 1698); R. 1721-1722, covering twenty years' experience of Police Captain Seabury (R. 1713). Plaintiffs themselves showed that the people of Maui county generally are law-abiding (R. 1697).

A street brawl is nothing but an affray, and is not the same type of offense, as the Supreme Court held.[59] The type of offense which evoked use of the unlawful assembly and riot act in the Maui cases was the deliberate use of mass force and violence in pursuit of an objective of preventing others from working. The lower court agreed with the Supreme Court that the right to work is a precious liberty[60] (R. 467). To establish comparable offenses, similar actions by other groups to terrify their victims into subjection to their will would have to be shown. It does not appear that the employers used such tactics. Hawaii is free of the Ku Klux Klan, and of "protection"-selling rackets. How such tactics as were employed in these cases would have been regarded by a prosecutor more inured to them was not for the court to say.

When the inadequacies of plaintiffs' showing of denial of equal protection are considered, it becomes clear that the court, under the guise of probing the good faith of the prosecution, made unwarranted assumptions. This is developed in point X.

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[59] 37 Haw. at p. 642. An affray is defined by section 11063 of the Revised Laws of Hawaii 1945 as "the unauthorized fighting of two or more persons in a public place."

[60] See *Truax* v. *Raich,* 239 U.S. 33, *Takahashi* v. *Fish and Game Commission,* 334 U.S. 410; *Territory* v. *Kaholokula, supra,* 37 Haw. 625, 642.

VI.

THE COURT ERRED IN ENJOINING PROCEEDINGS IN THE PENDING CRIMINAL PROSECUTIONS, CRIMINAL NOS. 2365, 2412, 2413 AND 2419.

A.

A federal equity court cannot enjoin pending state or territorial criminal prosecutions.

Nature of the intervention by the court below. These cases involve three incidents from which arose four criminal prosecutions, Criminal Nos. 2365, 2412, 2413 and 2419, now pending in the circuit court of the second judicial circuit of the Territory of Hawaii. We shall show that these cases involve nothing other than the pending criminal prosecutions (point VII, *infra*).

The present cases are particularly appropriate for application of the rule that a federal equity court cannot enjoin pending state or territorial criminal prosecutions. Acts which were criminal and which the Constitution permits to be punished as such were charged and were found to have occurred. The plaintiffs' contention is that the Unlawful Assembly and Riot Act and the conspiracy statute cannot be invoked against those acts. Thus they seek to protect themselves from punishment under the particular statutes, not to establish the lawfulness of what they did. Use of equity powers in such a situation is an obvious invasion of the criminal courts.

The full scope of the lower court's intervention becomes clear when the grand jury matter is considered. The defendants in Criminal No. 2365 were allowed to challenge the constitutionality of the grand jury as constituted under valid laws, on the holding that the federal equity court had the power to pass upon the lawfulness of the methods employed by the jury commissioners. If the lower court could hear and decide this issue while it was, by restraining order, holding off a trial under the indictment, it could also hear

and decide it while a trial under the indictment was in progress. It could interrupt a criminal case at any and every stage while it determined whether the trial was proceeding according to the principles of due process of law. The intolerable nature of such a situation is evident.

The doctrine of Cline v. Frink Dairy Co. and Ex parte Young. There is an important distinction between pending state or territorial criminal prosecutions and those which are merely threatened to be brought if a certain course of conduct is continued. Even where a case for equitable relief against *future* prosecutions is established, pending proceedings cannot be enjoined.[61] *Cline* v. *Frink Dairy Co.,* 274 U.S. 445, 452-453; *Ex parte Young,* 209 U.S. 123, 162; *Babcock* v. *Noh,* 99 F. 2d 738, C.A. 9th 1938; *Priceman* v. *Dewey,* 81 F. Supp. 557, 559, D.C. N.Y. 1949; *Society of Good Neighbors* v. *Groat,* 77 F. Supp. 695, D.C. Mich. 1948; *Jewel Tea Co.* v. *Lee's Summit, Mo.,* 198 Fed. 532, D.C. Mo. 1912, affirmed 217 Fed. 965; see *Spence* v. *Cole,* 137 F. 2d 71 as to disposition of the case in the district court. In *Cline* v. *Frink Dairy Co., supra,* the Supreme Court upheld an injunction against future prosecutions on the ground of unconstitutionality of the statute involved, at the same time reversing the court below with respect to the portion of the decree which enjoined a pending prosecution.

The distinction between pending criminal prosecutions and future prosecutions inheres in the statute discussed in part B of this point, but the distinction has even greater significance; in the field of criminal prosecutions the distinction is jurisdictional.[62] Thus for two reasons the lower

[61] The authorities cited in this part A are analyzed in a note in the appendix, pp. 175-181.

[62] The following cases, analyzed in note 61, appendix pp. 177-181, show that the distinction is jurisdictional. *In re Sawyer,* 124 U.S. 200; *Harkrader* v. *Wadley,* 172 U.S. 148; *Ex parte Young,* 209 U.S. 123, 149-166, followed in *Cline* v. *Frink Dairy Co., supra; Broad-Grace Arcade Corp.* v. *Bright,* 284 U.S. 588; *Priceman* v. *Dewey, supra,* 81 F. Supp. 557.

court did not possess the discretion to intervene in the territorial criminal proceedings as it saw fit: (1) it lacked jurisdiction to do so, as submitted in this Part A, and (2) it was prohibited by statute from doing so, as submitted in part B. In the third place as shown in Points IX and X, had the court possessed such discretion it lacked a basis for intervening.

The cases in which injunctions have been granted against future threatened prosecutions constitute no precedent for an injunction against pending prosecutions. Such cases[63] are based upon the jurisdiction of equity to protect from invasion the continued enjoyment of property rights. In the same way threatened future deprivation of such personal rights as freedom of religion and freedom of speech may be made the subject of equitable relief. That the threatened interference with the continued enjoyment of such rights takes the form of a criminal statute is regarded as incidental, since the subject matter before the court is the property right or other affirmative right which the complainant seeks to protect and enjoy. But in so far as pending criminal prosecutions are involved, the subject matter brought before the equity court is solely the validity of such criminal proceedings; only past acts are involved and there is no scope for the protection of equity against future interference with the continued enjoyment of lawful rights. Hence, for equity to act as to pending criminal prosecutions would be to assume the power of the criminal court to quash the charges.

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[63] See the following, all involving threatened, as distinguished from pending, prosecutions. In some of these cases an injunction was granted, in some not. *Philadelphia Co.* v. *Stimson,* 223 U.S. 605, 620-621; *Davis & Farnum Mfg. Co.* v. *Los Angeles,* 189 U.S. 207; *Packard* v. *Banton,* 264 U.S. 140, 143; *Fenner* v. *Boykin,* 271 U.S. 240, 243-244; *Spielman Motor Co.* v. *Dodge,* 295 U.S. 89, 95; *Beal* v. *Missouri-Pacific Railroad Co.,* 312 U.S. 45, 49; *Douglas* v. *Jeannette,* 319 U.S. 157, 163; *Toomer* v. *Witsell,* 334 U.S. 385; *Hynes* v. *Grimes Packing Co.,* 337 U.S. 86, 99; see 1 High on Injunctions, 4th Ed., section 68 at pages 87-88.

B.

A Federal court is prohibited by statute from enjoining pending state or territorial court proceedings.

Preliminary statement. As a matter of statutory prohibition, proceedings that are pending in a state or territorial court, even civil proceedings, are not subject to stay by a federal injunction. The statute, 28 U.S.C. 379, formerly section 265 of the judicial code, now section 2283, has been set forth in a note which also shows the applicability of this statute in the Territory of Hawaii.[64]

Application of the statute to pending cases. The statute does not literally apply unless the state court proceedings sought to be enjoined are pending when the federal equity suit is initiated. 43 Harv. L.R. 345, 375; 42 Yale L.J. 1169, 1191. Hence, cases allowing injunctions against future threatened prosecutions do not constitute exceptions to the statutory prohibition. The court below seems not to have understood this. It cited cases of threatened prosecutions, and even cases where no prosecutions or court proceedings of any kind were involved, on the supposition that they sustained the authority of the court to depart from the statutory prohibition (R. 471-475).

That the statute applies where the state court proceedings have first been begun stems from the origin of the statute in the doctrine of judicial comity.[65] See 43 Harv. L. R., *supra,* at page 363.

The prohibitory effect of the statute; exceptions to the statute. The rule constitutes a positive statutory prohibition against the issuance of injunctions to stay any pending state court proceedings. *Essanay Film Co.* v. *Kane,* 258 U.S. 358, 361; *Toucey* v. *New York Life Insurance Co.,*

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[64] See note 19, appendix, pp. 166-168, and see also as to the applicability of the statute in Hawaii pp. 47-48, *supra.*

[65] This Court recently reviewed the principles of judicial comity in *Gregg* v. *Winchester,* 173 F. 2d 512, 517, citing *Stainback* v. *Mo Hock Ke Lok Po,* supra.

314 U.S. 118. While prior to the *Toucey* case there had been several judicial exceptions to the statutory rule, since the *Toucey* case the mandatory character of the statute has been reestablished, subject only to well defined exceptions. The court erred (R. 480) in holding that the Civil Rights Act creates an exception enabling a federal equity court to restrain pending state and territorial criminal prosecutions when it deems the prosecutions not in good faith because of the motives of the prosecutor.[66]

That the instant cases do not fall within any of the exceptions to the statutory prohibition is a conclusion necessarily reached whether these cases are considered in the light of section 265 of the old judicial code, 28 U.S.C. 379, in effect at the time that the cases below were filed and heard, or in the light of the provisions of section 2283 of the new judicial code, in effect when these cases were decided.[67]

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[66] This is presented in Part C of this Point and in Point IX, *infra.*

[67] The first exception made in section 2283 is contained in the words "except as expressly authorized by Act of Congress." The courts already had recognized that Congress might expressly authorize exceptions to the rule against stay of pending proceedings. The statutes creating such exceptions have been enumerated. *Toucey* v. *New York Life Insurance Co., supra,* 314 U.S. 119; *Bowles* v. *Willingham,* 321 U.S. 503. Part C of this Point shows that the Civil Rights Act did not create such an exception.

The second exception mentioned in section 2283 concerns a stay granted by a court of the United States "where necessary in aid of its jurisdiction." This likewise codifies an existing exception, relating to cases where possession of a res is necessary to jurisdiction and the federal court was the first to acquire possession of the res. *Toucey* v. *New York Life Insurance Co.,* supra, 314 U.S. 118, 135. The exception has not been applied to actions in personam. *Mandeville* v. *Canterbury,* 318 U.S. 47, 49; *First National Bank & Trust Co.* v. *Village of Skokie,* 173 F. 2d 1 (C.A. 7th 1949). The exception might be applied where the jurisdiction of the federal court attached first and where the express purpose of the federal action was to enjoin the bringing of the state court action, filed notwithstanding. *Looney* v. *Eastern Texas R.R.,* 247 U.S. 214; *Truax* v. *Raich,* 239 U.S. 33, 36, affirming 219 Fed. 273, 284. This is not the instant case, for the criminal charges were filed first and then the federal court action was brought to quash the pending charges.

(Continued next page)

C.

The Civil Rights Act did not enlarge the equity jurisdiction of federal courts.

The lower court seems to have been of the view that the bringing of the present cases under the Civil Rights Act enlarged the scope of its equity jurisdiction (R. 480). Had Congress, by the Civil Rights Act, enacted an exception to the then existing statute prohibiting injunctions against pending state court proceedings, this would be relevant under the first exception noted in section 2283 of the new judicial code. However, the fact is that in the Civil Rights Act Congress made no such exception.

The statutory prohibition had been in effect since 1793, hence it antedated the Civil Rights Act. Congress expressly provided in the Civil Rights Act that the jurisdiction in civil and criminal matters conferred by the Civil Rights Act "shall be exercised and enforced in conformity with the laws of the United States," and in some instances, "the common law, as modified and changed by the constitution and statutes of the State wherein the court * * * is held."[68] As stated by Mr. Justice Holmes:

Another instance of the application of the exception in aid of jurisdiction is mentioned in the Revisers' Notes on section 2283 where reference is made to the stay of proceedings in state cases removed to the district courts, but this was already deemed an exception made by congressional act. *Toucey* v. *New York Life Insurance Co., supra,* 314 U.S. 118, 133.

The third exception mentioned in section 2283 concerns a stay granted by a court of the United States "to protect or effectuate its judgments." This relates to the power to enjoin relitigation in state courts of cases and controversies already fully adjudicated by federal courts. The Revisers' Notes state that the exception was inserted to grant a power disclaimed by the Supreme Court in the *Toucey* case. It represents the only instance in which section 2283 departs from the *Toucey* case. The exception has no bearing on this case.

[68] R. S. 722, 8 U.S.C.A. § 49a (contained in March 1949 supplement to U.S.C.A.), formerly 28 U.S.C. § 729.

"* * * the language of § 1979 [8 U.S.C. § 43] does not extend the sphere of equitable jurisdiction in respect of what shall be held an appropriate subject matter for that kind of relief. The words are 'shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.' They allow a suit in equity only when that is the proper proceeding for redress, and they refer to existing standards to determine what is a proper proceeding * * *" (*Giles* v. *Harris,* 189 U.S. 475, 486).

Were the sphere of equitable jurisdiction of the United States district courts extended by R. S. 1979 (8 U.S.C. section 43), such extension would include every alleged deprivation of constitutional rights. The resultant exception to the usual standards would be so broad as to nullify not only section 2283 of the new Title 28 (section 265 of the former judicial code) but also every other rule governing the withholding of injunctive relief. The Supreme Court has applied the usual limitations on the exercise of equity jurisdiction in cases brought under the Civil Rights Act the same as in other cases. For example, to enjoin future prosecutions threatening interference with religious freedom, irreparable injury must be shown as in other cases. *Douglas* v. *Jeannette,* supra, 319 U.S. 157 (See the analysis of this case in note 90, Appendix pp. 186-187).

This Court held in *Alesna* v. *Rice, supra,* 172, F. 2d at p. 179, that if section 2283, formerly 28 U.S.C. section 379, applies in the Territory, the case there presented (which was a civil rights case) presented no congressional exception. There are many cases in other circuits to the same effect, in each of them the statute, then section 265 of the judicial code, 28 U.S.C. section 379, having been applied by a district court in a civil rights case. *United Electrical, R. & M. Workers* v. *Westinghouse Electric Corp.,* 65 F. Supp. 420 (D.C.E.D. Pa., 1946); *Carras* v. *Monaghan,* 65

F. Supp. 658 (D.C.W.D. Pa., 1946); *Mickey* v. *Kansas City,* 43 F. Supp. 739 (D.C.W.D. Mo., 1942); see also *Atlantic Fishermen's Union* v. *Barnes,* 71 F. Supp. 927, 928 (D.C. Mass., 1947); *Davega-City Radio, Inc.* v. *Boland,* 23 F. Supp. 969 (D.C.S.D. N.Y., 1938). That the Civil Rights Act is not an exception to the statutory rule against stay of pending proceedings was expressly held in *Hemsley* v. *Meyers,* 45 Fed. 283, 289-290 (C.C. Kans., 1891); *Aultman & Taylor Co.* v. *Brumfield,* 102 Fed. 7, 12 (C.C.N.D. Ohio, 1900); *Live-Stock Dealers' & Butchers' Assn.* v. *Crescent City Live-Stock Landing & Slaughter-House Co.,* 1 Abb. U.S. 388, 15 Fed. Cas. p. 649, Case No. 8408 (C.C. La., 1870).

In the removal statute, 28 U.S.C. 74, formerly section 31 of the judicial code, now section 1443,[69] Congress expressly legislated under what circumstances the preservation of civil rights in state criminal cases requires federal court adjudication thereon in advance of final judgment. Injunctive relief is proper *in aid of this removal jurisdiction. Toucey* v. *New York Life Insurance Co., supra,* 314 U.S. at p. 133; Reviser's Notes on section 2283. Bills in equity to stay pending state criminal proceedings have been considered as *ancillary to a removal petition,* and as dependant upon the adequacy of the showing made in the removal petition.[70] Many of these removal cases have been presented, though unsuccessfully so, on the very grounds of local prejudice, official misconduct and oppression[71] considered by the court below as indicative of a lack of good faith. The holding of the court below (R. 494-496) is that in the face of the statu-

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[69] Appendix, pp. 181-182.

[70] See *Steele* v. *Superior Court,* 164 F. 2d 781, C.A. 9.

[71] See authorities cited in Point IX, pp. 104-105. An example of such a removal petition presented with an ancillary equity bill is the *Lamson* case, *Lamson* v. *Superior Court,* 12 F. Supp. 812, and *People* v. *Lamson,* 12 F. Supp. 813 petition for leave to appeal denied 80 F. 2d 388 (C.A. 9).

tory prohibition a bill in equity confers greater powers of federal court intervention in pending state criminal cases for the protection of civil rights than does the removal statute specifically applicable thereto, it being only necessary, according to this holding, that the petitioner ignore the ancillary nature of such an equity bill, whereupon the federal equity court will find itself free of all statutory limitations on its powers. Compare *Aultman & Taylor Co.* v. *Brumfield,* 102 Fed. 7, 15.

The removal statute, in its provisions for federal court intervention whenever a defendant in a state criminal case "is denied or can not enforce in the judicial tribunals of the State * * any right secured to him by any law providing for * * equal civil rights," contains considerable leeway for a broad interpretation. But the statute has been narrowly applied to cases where the denial of rights is attributable to state laws, not their administration[72] and where the denial is of *equal* rights.[73] We will show in Point IX that this narrow application of the statute has been followed notwithstanding allegations of official misconduct, bad faith, and oppression.

The only other source of jurisdiction of a federal court in state criminal cases lies in the writ of habeas corpus. This power, like the removal statute, has been narrowly limited. Under the "exhaustion of remedies rule" it is well settled that the power of habeas corpus will not be employed by a federal court if the state court proceedings have not ended or further state court proceedings are available, the only exceptions being cases involving the operations of the federal government, the authority of its officers, and foreign relations. *New York* v. *Eno,* 155 U.S. 89; *Ex parte Crouch,*

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[72] *Virginia* v. *Rives,* 100 U.S. 313, 319; *Neal* v. *Delaware,* 103 U.S. 370, 386, 393; *Gibson* v. *Mississippi,* 162 U.S. 565, 582; *Murray* v. *Louisiana,* 163 U.S. 101, 105-106; *Kentucky* v. *Powers,* 201 U.S. 1.

[73] *Steele* v. *Superior Court,* supra, 164 F. 2d 781, C.A. 9.

112 U.S. 178; *Ex parte Royall,* 117 U.S. 241, 251; *Whitten* v. *Tomlinson,* 160 U.S. 231; *Mooney* v. *Holohan,* 294 U.S. 103; *Ex parte Hawk,* 321 U.S. 114. The rule applies in Hawaii.[74] Here again it is important to note and we will show in point IX that the narrow application of the habeas corpus power has been followed notwithstanding there were presented contentions of denial of constitutional rights coupled with official misconduct, bad faith, and oppression.

When it is considered that the Supreme Court of the United States could have given a broad application to the two actual powers of federal intervention in pending state criminal cases (removal and habeas corpus) but has declined to do so and has narrowly limited these powers, and when it is considered that the court below gave unlimited scope to a non-existent equity power of intervention expressly prohibited to be used, the error in these cases becomes error of the first magnitude.

VII.

NO CAUSE OF ACTION WAS STATED BY THE UNION OR CLASS REPRESENTATIVES, AND NOTHING IS INVOLVED EXCEPT THE PENDING CRIMINAL PROSECUTIONS.

Threatened further criminal prosecutions not involved; ILWU and class representatives did not state a cause of action. Both the riot act and conspiracy act have been amended, as we have shown. Offenses committed before the amendments remain subject to prosecution under the former laws, but there can be no further prosecutions under those laws. Therefore these cases as they stand today[75] involve nothing except the four pending criminal prosecu-

[74] See note 19, appendix, p. 168.

[75] It is appropriate to consider the present situation under the rule that "an injunction looks to the future." *Douglas* v. *Jeannette,* 319 U.S. 157, 165.

tions, Criminal Nos. 2365, 2412, 2413, and 2419. Moreover these cases have not at any time involved threatened further criminal prosecutions. The court granted no injunction against further prosecutions (Decrees: R. 543-550; No. 12301, R. 89-96). The ILWU and class representatives did not state a cause of action, as will be shown.

Defendants moved for statement of the alleged claims of the individual plaintiffs who are defendants in the pending criminal cases separately (that is in separate counts) from the union and class representatives (R. 112-113; No. 12301, R. 57). If this motion had been granted much confusion would have been saved. In any event, the matter can be simplified to some extent by treating the ILWU and the class representatives as identical.[76] Both will be referred to as "the union."

The union had no legal interest, recognizable as a basis for adjudication, in the pending criminal prosecutions. It was not a defendant in the criminal cases and made no allegation that it was in danger of becoming such. To bring before the court something more than the four pending criminal prosecutions, the union had to present a justiciable controversy as to future prosecutions. The judicial power does not extend to the determination of abstract questions. Presentation of an actual case or controversy requires a specific statement of the activities which the plaintiff is engaged in which are within his rights, and action of a definite and concrete character constituting an actual or threatened interference with those rights. *Ashwander* v. *Tennessee Valley Authority,* 297 U.S. 288, 324; *United Public Workers* v. *Mitchell,* 330 U.S. 75, 89-91;

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[76] The court below treated both the union and the class representatives as presenting class actions (R. 514-515). The opinion shows that the class representatives, like the union, were treated as presenting a common front. If there was any materiality in the fact that both the union and class representatives sued it was only in connection with jurisdictional amount (*supra,* point I-B).

Watson v. *Buck,* 313 U.S. 387, 400, and cases cited. Not only must an actual case or controversy be presented but also it must be a substantial one. *Ex parte Poresky,* 290 U.S. 30, 31.

To comply with these requirements, the union first of all had to allege and show that its members were threatened with further prosecutions. This had to be alleged with particularity, so as to show "the imminence and immediacy of proposed enforcement, the nature of the threats actually made, and the exceptional and irreparable injury which complainants would sustain if those threats were carried out"; even a general allegation of intent of the defendants to enforce the two criminal statutes would not suffice. *Watson* v. *Buck, supra,* 313 U.S. 387, 398-401; *Ex parte La Prade,* 289 U.S. 444, 455; *Wilder* v. *Reno,* 43 F. Supp 727 (D.C. Pa. 1942); *Pughe* v. *Patton,* 21 F. Supp, 182 (D.C. Tex. 1937).

Secondly, the union had to allege and show what it was doing which brought it within the scope of the threats made, so that it feared further prosecutions. A mere desire to clear the decks of a statute deemed unconstitutionally restrictive would not suffice. It is not the law that labor unions and labor relations have a favored position in the obtaining of adjudications on the validity of statutes. In cases involving labor relations and labor unions, as in other cases, the Supreme Court of the United States has been adamant in its position that it will not pass upon the constitutionality of the statute on allegations that the statute clouds labor relations and hangs like the sword of Damocles over the head of the plaintiff union. A justiciable controversy must be presented. *Federation of Labor* v. *McAdory, supra,* 325 U.S. 450, 460, 470; *United Public Workers* v. *Mitchell, supra,* 330 U.S. 75, 84, 87-91; *United States* v. *Petrillo, supra,* 332 U.S. 1, 9-10. This "sword of Damocles" argument is the same argument of intimidation which was

succinctly disposed of by this Court in *Alesna* v. *Rice, supra.*[77] See also *Atlantic Fishermen's Union* v. *Barnes, supra,* 71 F. Supp. 927, 928 (D.C. Mass. 1947).

Thirdly, to present a justiciable controversy the union must show that the pursuits concretely threatened by further prosecutions were its lawful rights under the Constitution, and hence entitled to protection.[78]

The paucity of the pleadings in these cases is easily understood when the above requirements are considered. Since no threats of further prosecutions had been made, none could be or were alleged. And if the plaintiffs had attempted to spell out a threat of further prosecutions by projecting the past into the future, their case would not have been improved. They were unwilling to take a position as to the past occurrences; their pleadings equivocated as to the past. (Statement of the case, supra, pp. 13-14.) The facts were that plaintiffs had picketed in large numbers[79] without interference by the defendant officers so long as no crimes were committed[80] and that it was the deliberate use of mass force and violence which caused the unlawful

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[77] 172 F. 2d at p. 177, where the court said of the argument of intimidation:

"* * * it is apparent that if it [the prosecution] be lawful, which is the question in issue, no such consequence will follow."

[78] *Supra,* p. 50, quoting Mr. Justice Jackson's statement: "A right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's *cause of action.*"

[79] One of the union's witnesses testified they had as many as 2,000 pickets (R. 1280). Plaintiffs' own exhibit 33, a moving picture film, shows the extent of the picketing which plaintiffs enjoyed so long as it was peaceful.

[80] The court found that prior to the Paia incident there had been but few arrests, one being for assault and battery when a member of the union struck a supervisor, one for malicious injury when a union man was accused of closing an irrigation ditch, and two when union members were charged with pulling the ignition wires from the distributor of a supervisor's automobile (R. 399-400, note 25).

assembly and riot act to be invoked. For plaintiffs to argue that the past would be repeated in the future would only show one of two things, either that plaintiffs' intentions were peaceful, as on the occasions shown in their exhibit 33 (a moving picture film), in which event they were not threatened with further prosecutions under the statutes assailed, or that they were not peaceful, as on the occasions of the Paia, Kaumalapau Wharf and Kalua brothers incidents, in which event, whatever argument might be made as to threats of further prosecutions, plaintiffs were out of court anyway because they did not seek to protect peaceful picketing and did not come into equity with clean hands.[81] In this situation, they attempted no statement of a cause of action.[81a]

Chief of police of Maui county should have been dismissed from the case. Since threatened further criminal prosecutions were not involved, Jean Lane, chief of police of Maui county, a party defendant in No. 12300, appellant here, should have been dismissed. The court erred (R. 519) in denying the motion for his dismissal (R. 129).

Supposed resemblance of these cases to *A. F. of L.* v. *Watson*. Without foundation therefor in the issues in the

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[81] The maxim that "he who comes into equity must come with clean hands" is the subject of point VIII.

[81a] By the amendment of the complaint in No. 12300 plaintiffs added allegations of jurisdictional amount, to conform to the court's then holding that paragraph (14) of section 24 of the old judicial code, 28 U.S.C. 41 (14) now section 1343, did not apply, and in amended paragraph XVIII alleged that the union could not function so long as its members were "subject to prosecution under statutes containing unconstitutional limitations on the right to picket because of the fear and intimidation of the members of said organizations engendered by the threat of punishment for the exercise of these rights guaranteed by the Constitution" (R. 33). Paragraph XXI of the complaint in No. 12301 was the same (No. 12301, R. 24). These allegations of the value of the right to peacefully picket were not backed up by any allegations in the complaint of a continuing threat of punishment for peaceful picketing.

cases,[82] the court went extensively into labor relations in the Territory. Evidence relevant only to jurisdictional amount, and that only because the court erroneously had failed to dismiss the union from the actions in the first place, was embroidered into a case supposedly resembling *A. F. of L.* v. *Watson,* 327 U.S. 582. This supposed resemblance of the present cases to *A. F. of L.* v. *Watson* was one of two grounds deemed by the court below to justify it in invading the jurisdiction of the criminal courts in the pending cases. The other ground, the supposed lack of good faith of the prosecutions, is considered in points IX and X.

Using *A. F. of L.* v. *Watson* as a pattern the lower court held that the impact of the unlawful assembly and riot act and the conspiracy statute, which previously by errors we have discussed the court had held unconstitutional in toto, was "such as to disrupt immediately any substantial possibility or opportunity for genuine collective bargaining between the employers of the sugar and pineapple industries and their respective employees" (R. 477-478). This part of the opinion (R. 477-479, continued at R. 483) shows that the supposed impact of the statutes on labor relations caused the court to be in haste to strike down the statutes, and that the court below distrusted the territorial court's use of the power of punishment contained in the unlawful assembly and riot act.

A. F. of L. v. *Watson* bears no resemblance to these cases. There the bill alleged that the plaintiff labor unions, duly designated collective bargaining representatives, sought to pursue their rights by renewing closed shop agreements, then in existence or about to expire, and by making new such agreements, that the attorney general of Florida held

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[82] We previously have shown that the proceeding was not one arising under the National Labor Relations Act, Labor Management Relations Act 1947, or any other Act of Congress regulating commerce (Point II-B *supra*). And the foregoing shows that the union stated no justiciable controversy.

such agreements violative of a newly adopted Florida constitutional amendment and threatened *quo warranto* proceedings and criminal prosecutions, that plaintiff unions, as duly designated collective bargaining representatives, by virtue of the National Labor Relations Act had the right to use closed shop agreements and had the right to collectively bargain for closed shop agreements, that said rights were granted by said federal law and the Florida law was in conflict with it. Without deciding whether an interlocutory injunction should issue[83] the court held that this bill alleged an imminent threat to an entire system of collective bargaining, involving 500 contracts, affecting 100,000 employees, and that the allegations of the bill merited its retention[84] while state law questions were settled in the state courts. Dismissal of the bill by the district court therefore was reversed. The case involved no pending criminal prosecutions and granted no injunction.

The court's treatment of the impact of the statutes on collective bargaining is wholly unrelated to the actual cases before it. The court seems to have been of the view that no interference by the defendant officers with lawful activities of the union need be actually threatened, for the court says:

> "A strike properly conducted is a legitimate weapon in the armory of labor. Peaceful assembly, peaceful picketing, and freedom of speech and of assembly are equally legitimate weapons of labor." (R. 478.)

[83] 327 U.S. at p. 595, footnote 10.

[84] Subsequently, in *Algoma Plywood Co.* v. *Wisconsin Board,* 336 U.S. 301 (March 7, 1949) the Supreme Court held against the theory of the bill in *A. F. of L.* v. *Watson,* holding that there was no conflict between state regulation of the use of union security agreements (of which the closed shop is a form) and the National Labor Relations Act. At page 305 of this opinion it appears that the language contained in the later Labor Management Relations Act 1947, section 14 (b), which refers to the possibility of a ban on closed shop agreements by a state or territory, was not an essential element of the opinion, the court clearly holding at page 305 that the result was the same under the original National Labor Relations Act which did not contain such language.

Yet the court also said:

> "We do not condone or attempt in any manner to palliate the illegal conduct of the strikers, plaintiffs in these proceedings." (R. 485.)

The court seems to have felt that where union members are concerned a prosecutor must select the criminal statute to be invoked with an eye to avoiding any effect on labor relations. The Supreme Court of the United States has left no doubt that use of force and violence in a labor dispute may be quelled without consideration of the impact on labor relations and without conflict with the Labor Management Relations Act 1947.[85] As might be supposed and as the cases in the Supreme Court of the United States both before and since *A. F. of L.* v. *Watson* have determined, collective bargaining, association of employees in labor organizations, work stoppages, and picketing are not absolute rights.[86]

In fairness to the territorial circuit court it must be said that there was no reason for the lower court's distrust of that court's use of the power of punishment contained in the unlawful assembly and riot act. The lower court assigned none. Plaintiffs' own exhibit 13 (R. 1354-1358) shows the care exerted by the territorial circuit court in such matters. Moreover, there were many other territorial laws[87] bearing on the question of punishment, embodying the modern system of penology. (See *Williams* v. *New York,* 337 U.S. 241, 247-249.) The unlawful assembly and riot act having been amended, and the amendment as to punishment having been made retroactive, this matter does not warrant extensive treatment.

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[85] The authorities are cited in the appendix, pp. 182-184.

[86] Note 85, supra, appendix, p. 182.

[87] Appendix, pp. 174-175, note 41.

VIII.

PLAINTIFFS DID NOT COME INTO EQUITY WITH CLEAN HANDS.

The court granted no injunctive relief against further prosecutions, and as submitted in the previous point, these cases, as they stand today, do not involve and have not at any time involved, a threat of further prosecutions. Nevertheless, the court declined to dismiss the union plaintiff and the class representatives and made much of the threat to labor relations which it thought the statutes, particularly the Unlawful Assembly and Riot Act, entailed. The court recognized that violations of law had occurred and said it did not condone them, but refused to apply the maxim that "he who comes into equity must come with clean hands" (R. 485-486).

Since planned violations of law had occurred, at the very least the principles of equity compelled the union and class representatives to purge themselves by disavowing the authority of the union officials and union police who were leaders in these unlawful activities (statement of the case, pp. 18-20) and by presenting the court with a convincing showing that adequate steps had been taken to prevent the recurrence of such violations. They did nothing of the kind. To the contrary, Jack Hall, regional director for the ILWU, characterized the incidents which occasioned the arrests as "legitimate picket activity," "ordinary picketing," and stated that the union required a determination whether it could be carried on "without being subjected to severe felony charges" (R. 1151-1152).

The court seems to have misunderstood the maxim that "he who comes into equity must come with clean hands" (R. 485-486). It stated:

> "* * * The doctrine of unclean hands is inapplicable here. If it were otherwise no one who had infringed an unconstitutional statute, no matter how irreparable

> the damage resulting from the prosecution and no matter how great and imminent the dangers inherent in the statute's enforcement, could cause a district court of the United States to enjoin prosecution thereunder. The application of the doctrine of unclean hands under the theory enunciated by the defendants would have driven the plaintiffs out of court in A. F. of L. v. Watson and would have had a like effect in Traffic Telephone Workers' Fed. of New Jersey v. Driscoll, *supra.*"

The court's error was a fundamental one, for it failed to perceive the difference between pursuit of activities which, as in the cases cited by the court, are lawful and constitutionally protected unless the statute under attack imposes a valid restraint, and pursuit of conduct which, as in the present cases, irrespective of the constitutionality of the statute under attack is unlawful and not constitutionally protected.

The point is very well developed in an opinion written by Mr. Justice Haney, sitting in a three-judge court, in the case of *Buck* v. *Gallagher,* 36 F. Supp. 405 (W.D. Wash. 1940), appeal dismissed 315 U.S. 780. It was held that ASCAP could not attack the constitutionality of a Washington statute when, irrespective of the constitutionality of that statute, ASCAP was in violation of the Sherman Anti-Trust Act. Other cases to the same effect are *Farr* v. *O'Keefe,* 27 F. Supp. 216 (D.C. Miss.); *Knights of the Ku Klux Klan* v. *Strayer,* 34 F. 2d 432 (C.A. 3d); *American League of the Friends of New Germany* v. *Eastmead,* 116 N.J. Eq. 487, 174 Atl. 156; *Rosenberg* v. *Arrowsmith,* 82 N.J. Eq. 570, 89 Atl. 524. In *Toomer* v. *Witsell,* 334 U.S. 385, 393, it was held that previous convictions for shrimp fishing in inland waters had nothing to do with the lawfulness of fishing in coastal waters, the matter then before the court. But in the present cases, as in the cases above cited, it is the very conduct which occasioned the interference com-

plained of that is unlawful. Nor would the striking down of the statute render it lawful, a point misapprehended by the court below.

It is highly significant that in *Hague* v. *CIO,* 307 U.S. 496, the right to relief was grounded upon the lawfulness of the plaintiffs' conduct. Plaintiffs' bill alleged that "all the activities in which they seek to engage in Jersey City were, and are, to be performed peacefully, without intimidation, fraud, violence or other unlawful methods" (307 U.S. at p. 503). The trial court found that the defendant officers had adopted the deliberate policy of removing the plaintiffs from Jersey City by force and violence "despite the fact that the persons affected were acting in an orderly and peaceful manner" (307 U.S. at pp. 504-505). The Supreme Court considered these allegations and findings a constituent part of the case. They are lacking here.

It is the policy of the federal government not to grant injunctive relief to any party to a labor dispute unless he comes into court with clean hands. That is the basis of section 8 of the Norris-La Guardia Act.[88] Of course that section does not literally apply in the instant cases, since the defendant officers were not "interested in [the] labor disputes" (see 29 U.S.C. 113). Still it is a guidepost for application of the clean hands doctrine, and the plaintiffs fail to meet the test. The Norris-La Guardia Act (section 8, *supra*) requires that an applicant for injunctive relief shall have complied with "any obligation imposed by law which is involved in the labor dispute." In the sugar and pineapple strikes the union failed to comply with its federally enacted obligations in that nonstriking employees were coerced in violation of the Labor-Management Relations Act 1947. *In re ILWU, Sunset Line & Twine Co.,* 79 N.L.R.B. No. 207, Case No. 20-CB-1 (October 22, 1948);

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[88] 47 Stat. 72, sec. 8, 29 U.S.C. 108; *Brotherhood of Railroad Trainmen* v. *Toledo, Peoria and Western R.R.,* 321 U.S. 50, 60.

In re Local 1150 United Electrical, Radio & Machine Workers, 84 N.L.R.B. No. 110, Case No. 13-CB-5 (June 30, 1949), cited and explained in note 85, appendix p. 184.

IX.

ASSERTED BAD FAITH OF THE PROSECUTION IS NOT A GROUND FOR FEDERAL COURT INTERVENTION IN A PENDING STATE OR TERRITORIAL CRIMINAL CASE.

The court below placed considerable stress and even greater strain on the following words of Mr. Justice Stone in the case of *Douglas* v. *Jeannette,* 319 U.S. 157, 163: "No person is immune from prosecution in good faith for his alleged criminal acts." This statement does not signify the opposite, that is "everyone is immune from prosecution in bad faith for his alleged criminal acts." The court below so assumed (R. 480). Analysis of Mr. Justice Stone's statement will show that it has no such meaning. The matter will be discussed first as to state and territorial criminal proceedings already initiated and second as to state and territorial criminal prosecutions threatened in the future. We will show that *Douglas* v. *Jeannette* concerned criminal prosecutions threatened in the future and will consider it in the second group of cases.

In point X we analyze the court's finding of lack of good faith of the prosecution and show that it was baseless and unwarranted. Nevertheless the legal arguments made in the present point are of the greatest importance, for if defendants in criminal cases can try the prosecutor in a federal equity court before they themselves can be tried in the state court, there will be an end to the efficacy of law enforcement. Defendants in criminal cases have nothing to lose and everything to gain by so trying the prosecutor. They cannot lose for they cannot be convicted in the federal court, and they are bound to gain delay if nothing else.

Instances of criminal cases initiated before the application for federal court intervention. The quoted statement from *Douglas* v. *Jeannette* does not mean that bad faith of the prosecutor in bringing a criminal prosecution is a ground for federal intervention in pending criminal cases. Obviously this is so where the facts fall short of a defense to the prosecution.[89] But even where the facts constitute a relevant defense, it is not a ground for federal intervention that such defense is coupled with official misconduct, bad faith or oppression.

Federal intervention via equity channels is out of the question because equity has no jurisdiction to intervene in pending criminal cases, there is a statutory prohibition against such intervention, and the statute contains no exception having to do with the good faith of a criminal prosecution (point VI, *supra*). Equitable relief could only be ancillary to removal jurisdiction. In removal and habeas corpus cases jurisdiction does exist and the questions are the limits of such jurisdiction and whether the court will exercise it; cases considering the bad faith of a criminal prosecution as a ground of federal intervention necessarily are chiefly habeas corpus and removal cases.

Many times defendants in criminal cases have come into federal court, and have asserted denial of constitutional rights coupled with official misconduct, bad faith, oppression, discriminatory treatment by state judges, prosecutors and jury foremen, or inability to obtain justice in the state courts because of local prejudice. All such defendants have been sent back to the state courts to present such contentions there subject to appellate review. *Kentucky* v. *Powers*, 201 U.S. 1, is a leading case brought under the removal statute. The petitioner for federal relief had been tried three times as accessory before the fact to a murder. He

[89] Points V and X show that the court below found no facts which would be a defense to the Territory's prosecutions.

claimed that there was "a deliberate purpose on the part of those charged with the administration of justice * * * to take his life, under the forms of law, even if the facts did not establish his guilt of the crime charged." His petition made a strong showing of bitter political animosities working against him to deny validity to a pardon which he held and to exclude members of his political party from the jury. These allegations showed shocking misconduct on the part of the administrative officers connected with petitioner's previous trials according to the Supreme Court. Nevertheless the court ordered the petitioner remanded to the custody of the state authorities. Other such cases are *Snypp* v. *Ohio,* 70 F. 2d 535, C.A. 6, cert. denied 293 U.S. 563; *White* v. *Keown,* 261 Fed. 814 (D.C. Mass.) ; *State* v. *Weinberger,* 38 F. 2d 298 (D.C. N.J.) ; *Lamson* v. *Superior Court,* 12 F. Supp. 812, *People* v. *Lamson,* 12 F. Supp. 813, leave to appeal denied 80 F. 2d 388, C.A. 9; and the many cases concerning grand jury selection cited in note 72, *supra.* In the *Lamson* case, *supra,* Lamson alleged local prejudice and denial of civil rights in the summoning for his third trial of jurors called at two previous trials. He presented a bill in equity seeking an injunction against continuance of his third trial and a removal petition. The court viewed the equity complaint as ancillary to the removal petition, which it held insufficient. The notion that in the face of the statutory prohibition (point VI-B, *supra*) a bill in equity confers greater power for the protection of civil rights in pending state criminal cases than does the removal statute designed for that purpose, is unique in the court below (R. 495).

Mooney v. *Holohan,* 294 U.S. 103, is a leading habeas corpus case. The petitioner alleged that his conviction had been obtained by the knowing use of perjured testimony and the deliberate suppression of rebuttal testimony. The Supreme Court, while holding that this would constitute

a denial of due process if true, held that further state court proceedings were available in the form of a petition for habeas corpus and that further recourse must be had to the state court. Similar cases are *Ex parte Hawk,* 321 U.S. 114, 116; *United States ex rel Steel* v. *Jackson,* 171 F. 2d 432 (C.A. 2d 1948); *Sharpe* v. *Buchanan,* 121 F. 2d 448 (C.A. 6th 1941); and *Sweet* v. *Howard,* 155 F. 2d 715 (C.A. 7th 1946). The most recent habeas corpus case is *Dye* v. *Johnson,* No. 332 of the October 1949 term of the Supreme Court, decided November 7, 1949, 338 U.S. 864, in which the Supreme Court granted a petition for certiorari and at the same time, on the authority of *Ex parte Hawk, supra,* summarily reversed the opinion below, rendered by the court of appeals for the third circuit and written by Chief Judge Biggs who wrote the opinion of the lower court in the present cases. As reported in 175 F. 2d 250, the petition alleged that at the petitioner's Georgia trial perjured coerced testimony was used against him to the knowledge of Georgia officers, that following his conviction he was committed to a chain gang and was a victim of cruel, barbaric and inhuman treatment, and that if extradited to Georgia his life would be endangered by mob violence and by the brutality of his jailers. The court of appeals held that petitioner had been subjected to cruel and unusual punishment in violation of the Constitution, and that there was no necessity of exhausting state remedies in an extradition case. It will be noted that in its summary reversal of this opinion the Supreme Court of the United States adhered to the exhaustion of remedies rule.

Society of Good Neighbors v. *Groat,* 77 F. Supp. 695 (D.C.E.D. Mich. 1948), is an equity case decided by a three-judge court. The Michigan statute providing for the investigation of suspected offenses by a judge (referred to in Michigan as a one-man grand jury) was attacked as unconstitutional. It was alleged that the judge acting as such

one-man grand jury, the prosecuting attorney, and the police commissioner had entered into a conspiracy to destroy the plaintiff organization and that this conspiracy had prompted the proceedings complained of, also that the plaintiff organization was being crippled by being deprived of its books and records. The court held on the authority of section 265 of the judicial code, 28 U.S.C. 379, now section 2283 (*supra*, point VI-B), *Cline* v. *Frink Dairy Co.*, (*supra*, point VI-A), and *Ex parte Hawk, supra*, that the plaintiff organization must exhaust its remedies under the state law. See also the equity case of *East Coast Lumber Terminal Inc.* v. *Town of Babylon*, 174 F. 2d 106, 112 (C.A. 2d 1949), affirming 81 F. Supp. 701, the facts appearing from the trial court's opinion at p. 702.

Even where the criminal proceeding asserted to be in bad faith is a federal prosecution, allegations of official misconduct have not been deemed grounds for collateral intervention. Thus in *Glasgow* v. *Moyer*, 225 U.S. 420, a federal prisoner sought his discharge by a writ of habeas corpus, alleging unconstitutionality and uncertainty of the federal statute under which he was indicted, illegal search and seizure, mistreatment while in custody, and trial before an illegally selected jury. The Supreme Court pointed out (225 U.S. at p. 229) that much the same petition had been presented before trial and had been refused then, that the orderly procedure was for petitioner to set up his defenses of fact and law in the criminal proceeding and then seek appellate review, and that it made no difference that unconstitutionality and uncertainty of the criminal statute were asserted. As said in *Dorsey* v. *Gill*, 148 F. 2d 857, 877 (App. D.C. 1945), cert. denied 325 U.S. 890, referring to alleged misconduct of the police:

> "* * * Power to grant such a writ [habeas corpus] * * * is not to be used as an indirect mode of disciplining misconduct."

See also *Young* v. *Sanford,* 147 F. 2d 1007 (C.A. 5th 1945), cert. denied 325 U.S. 886, and cases there cited.

The foregoing authorities demonstrate that the statement from *Douglas* v. *Jeannette* quoted at the beginning of this point, i.e., "No person is immune from prosecution in good faith for his alleged criminal acts," does not call for application of the reverse statement that "everyone is immune from prosecution in bad faith for his alleged criminal acts." Some rational explanation of the *Douglas* v. *Jeannette* statement is called for. We proceed now to consider the cases having to do with threatened future criminal prosecutions, including the *Jeannette* case.

Cases of threatened future criminal prosecutions. The quoted statement was introduced into the cases following the date of the *Hague* case. Prior to that time the general statement was that equity will not enjoin criminal prosecutions even under an invalid statute, except where necessary to protect property rights from irreparable injury. (Beyond dispute, in modern times the exercise of personal rights also may be protected from invasion but that does not change the fundamental problem.)

We have set forth in a note[90] a chronological analysis of the cases in the United States Supreme Court stating the rule that no one is immune from a criminal prosecution brought in good faith. All such cases involve threatened (not pending) criminal prosecutions. We have started the analysis with the *Hague* case because it is the keystone of the rule (although the "good faith" rule was not set forth in so many words in the *Hague* case), and have ended it with *Douglas* v. *Jeannette* where the foundation of the rule in the *Hague* case is stated in the court's opinion. The analysis shows: (1) The rule presupposes that the plaintiff has shown an actual threat of interference with the continued enjoyment

[90] Appendix, pp. 184-187.

of a lawful property right or other lawful constitutionally protected right.[91] (Plaintiffs have not established a threat to invoke the statute against peaceful picketing, and the court erroneously proceeded on the hypothesis that the unlawfulness of plaintiffs' conduct was immaterial.) (2) If the plaintiff has established the first proposition (these plaintiffs did not), he must further show that irreparable injury will be inflicted on him in the enjoyment of his lawful constitutionally protected rights if he does not have the aid of a court of equity. Imminence of a threatened criminal prosecution, even under an allegedly invalid statute, is not of itself irreparable injury, because the necessity of litigating the constitutional issues in the criminal court is not such injury. But under the "good faith" rule a so-called prosecution which will not in fact afford an opportunity to obtain an adjudication of the constitutional issues does constitute irreparable injury. For example, in the *Hague* case, where the law was being used as a means to deport persons without any intention of bringing them before the criminal courts, there could be no adjudication on the constitutional issue in the criminal courts.

Hence, the statement that "no one is immune from prosecution in good faith" means that no one is guaranteed against the prospect of having to present and have adjudicated his contentions in the criminal court. The rule is simply a way of stating that when the criminal court is an available forum, it does not lie with the person threatened with prosecution to choose another forum. Here the gravamen of plaintiffs' complaint was that the criminal cases would proceed and the criminal court would err; they had a forum but were looking for a more favorable one. The rule in any event is irrelevant in these cases because no future threatened criminal prosecutions are involved, and the rule has nothing to do with pending criminal prosecutions.

[91] See cases cited in note 63, supra.

X.

THE COURT ERRED IN ITS FINDING THAT THE CRIMINAL PROSECUTIONS WERE NOT IN GOOD FAITH.

Preliminary statement. The court should have made no finding concerning the good faith of the prosecutions, as already has been submitted. Such a finding was not relevant in these cases (points VI and IX, *supra*) nor was it called for by the pleadings (Statement of the case, *supra,* pp. 15-17). Nevertheless the court did make a finding, and we devote this part of the argument to analysis of it. Each subsidiary matter will be considered after consideration of the general picture. We intend to show that the court committed unwarranted invasions of the executive and legislative departments (just as its disposition of the pending territorial criminal prosecutions was an unwarranted invasion of the territorial judicial department), that it found facts not in issue, assumed facts without finding them and without any basis therefor, relied on inadmissible evidence, and made other findings by abuse of the doctrine of judicial notice.

Motives of the prosecutor are irrelevant; assumption of supervisory authority by the trial court. The court stated that the words "in good faith" are "intended to draw a line between bona fide prosecutions embarked upon to uphold the law and prosecutions for some ulterior purpose or motive" (R. 480). The court conceded that "the motive of the prosecutor is of course not relevant to the ordinary criminal proceeding" (R. 480), but then proceeded to hold that motives are relevant to good faith under the Civil Rights Act, "in connection with the exercise of the discretion of a district court of the United States to restrain such criminal actions" (R. 480). The conclusion reached by the court was that "the unlawful assembly and riot act has been employed as a club to beat labor and that the conspiracy statute is an apt instrument to the same end" (R. 482).

The court of course was correct in stating that the motive of the prosecutor is not relevant to a criminal proceeding. See *People* v. *Yuen,* 32 Cal. App. 2d 151, 89 P. 2d 438, 442, 90 P. 2d 291, a riot case arising out of a labor dispute.[92] To make a defense out of the prosecutor's reasons for the prosecution one would, at the very least, have to make out a complete case of denial of equal protection, which plaintiffs failed to do (point V, *supra*). As to the court's reference to the Civil Rights Act, we have shown that said Act did not confer on a federal equity court the authority to intervene in pending state criminal cases (point VI, *supra*).

By its finding of an ulterior purpose to beat labor the court rejected the conclusion that the prosecutions were for the purpose of upholding the law. But the court did not find that the plaintiffs were conducting themselves lawfully and in fact found the opposite. We will show that the court rejected the conclusion that the prosecutions were for the purpose of upholding the law because the court thought the measures taken by the prosecutor too stringent; the court was insistent that a misdemeanor statute be used. From its disagreement with the stringency of the measures taken the court inferred an ulterior purpose. By this means, the court assumed a supervisory authority over the prosecutor which the court did not possess. Even over the United States attorney the court does not possess supervisory authority to determine whether a prosecution is oppressive or unfair. *District of Columbia* v. *Buckley,* 128 F. 2d 17, 20-21 (App. D.C. 1942); *United States* v. *Thompson,* 251 U.S. 407, 412-414. By statute[93] a

[92] See also *Everett* v. *State,* 26 Ala. App. 502, 163 So. 667, cert. denied 231 Ala. 110, 163 So. 667.

[93] Section 10830, Revised Laws of Hawaii 1945, provides:

"**Sec. 10830. Nolle prosequi.** No nolle prosequi shall be entered in a criminal case in a court of record except by consent of the court upon written motion of the prosecuting attorney stating the reasons therefor. The court may deny such motion if it deems such reasons insufficient and if, upon further investigation, it

circuit court of the Territory possesses certain authority over the prosecuting attorney which a federal court does not possess over the United States attorney,[94] but naturally the local statute does not enlarge the powers of the federal court over territorial law enforcement officers.

People of the Territory on trial; the pattern of the precedent set by the lower court's opinion. There were no allegations, evidence, or findings of any conspiracy or concert of action between the prosecuting officers and the employers[95] or anyone else. To support the conclusion that the prosecutions were being carried on for the purpose of attack upon a labor movement, the court seems to have supposed that there is a "mores" of the community (R. 482) which has been the same throughout the life of the Territory, takes the place of evidence as to the purpose of the prosecutions, and is equally applicable to all parts of the Territory and all of the law enforcement officers who have served from time to time (R. 481-482, 388-390). Such simplicity of treatment may be convenient, but it does not represent the judicial process.

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decides that the prosecution should continue, it may, if in its opinion the interests of justice require it, appoint a special prosecutor to conduct the case and allow him a fee. The proviso of section 10685 relative to fees allowed counsel assigned by the court for a defendant is made applicable to fees of special prosecutors appointed hereunder."

[94] Compare *United States* v. *Brokaw*, 60 F. Supp. 100 (D.C. Ill. 1945).

[95] The defendants in the criminal cases, plaintiffs here, had not even been discharged from their employment; it was stipulated that those involved in the Paia incident who were employees of Maui Agricultural Company were still so employed (No. 12301, R. 81) and that those involved in the two Lanai incidents who were employees of Hawaiian Pineapple Company were still so employed (R. 338).

The court's treatment of the "mores" of the community levels a scathing impeachment against the people of the Territory. The court states that "the criminal proceedings complained of are being carried on for the purpose of attack upon a labor movement rather than for the ends of justice" and in the same breath states that "we do not accuse the Attorney General of Hawaii or the prosecuting officers of Maui County * * * of lack of honor or of personal integrity. The labor movement is an unpopular one in the Hawaiian Islands and these gentlemen do no more than reflect the mores of their time and their locality" (R. 482). The defendants did not know that the people of the Territory were on trial or what were the charges against them. The court itself remarked during the trial: "We are not trying Maui County here. We have no power to try a county and don't propose to" (R. 1711). Of course this was a correct statement; inquiries of that nature pertain to the legislative and executive branches of government. Many congressional committees have voluminously investigated Hawaiian affairs. It is curious that the court made no reference to these reports. They find that by 1946 labor-management relations were progressing satisfactorily and the position of labor in the Territory was good.[96]

Should the kind of treatment given to the Territory's criminal cases in the court below be sustained by this Court, the result will be that no criminal case arising out of a labor dispute can be disposed of without a pretrial in a federal court. The union need not even plead its charges

[96] Report of the subcommittee of the committee on territories, House of Representatives, 79th Cong., 2d Sess., pp. 546-550c of the printed hearings before the subcommittee held in Hawaii in January 1946, pursuant to H.R. Res. 236 of the 79th Cong., 2d Sess. Pertinent findings and conclusions in the subcommittee's report are findings 30-38 and conclusions 12-13. The subcommittee's report was accepted by the full committee and made Appendix 4 of its report on the Hawaii statehood bill, H.R. Rep. No. 194, 80th Cong., 1st Sess., H.R. Rep. 254, 81st Cong., 1st Sess.

against the prosecutor. It need only assert constitutional issues, and that the measures taken by the prosecutor are unsuitable, from which the federal court will deduce bad motives of the prosecutor if there is any background of tense labor relations (R. 482, 388). Certainly as good or better documentary material exists for taking judicial notice of tense labor relations outside Hawaii,[97] as was used by the court below to excuse its intervention in Hawaii's criminal cases. So this piece of the pattern will not be missing.

Abuse of the doctrine of judicial notice. The court abused the doctrine of judicial notice in this branch of the case. Judicial notice may be used only where "the matter clearly falls within the domain of the indisputable."[98] The facts assumed by the court in this case clearly did not have the certainty required for judicial notice, particularly the assumption that labor-management relations in Hawaii have had unchanging characteristics over the past twenty-five years (R. 388, 482). How can a court assume such to be an indisputable fact when (1) the department of labor's report on the economy of Hawaii in 1947, prepared and transmitted to Congress pursuant to section 76 of the Hawaiian Organic Act (29 U.S.C. 7) states that fundamental changes were wrought by the war in the character of labor-management relations;[99] (2) the congressional committee reports on Hawaii cited in footnote 96, *supra,* are to the same effect; and (3) comparison of other congressional

[97] See the Report of the Joint Committee on Labor-Management Relations in the West Coast Maritime Industry, made pursuant to section 401 of the Labor-Management Relations Act 1947, Public 101, 80th Cong., 1st Sess., 61 Stat. 160, being Senate Report 986, Part 5, 80th Cong., 2d Sess. The report deals with the ILWU outside Hawaii. See pages 2, 14, 35-36, 55-57, 63-65 for general material and pages 10-13, 57-60, and 66 with particular reference to the ILWU.

[98] 57 Harv. L.R. 269, 293; 20 Am. Jur. 50, sec. 19.

[99] Bulletin No. 926, United States Department of Labor, "The Economy of Hawaii in 1947," p. 180.

committee reports on Hawaii and the congressional committee report concerning the west coast cited in footnote 97, *supra,* show present day similarity in the problems of Hawaii and the west coast.[100]

At the conclusion of summing up the court asked counsel "to include in their briefs all *reported* decisions in the territorial courts or in this Court respecting picketing or contempt proceedings arising under alleged violations or actual violations of picketing" (R. 1938-1939, italics added). The attorney general complied. Plaintiffs' counsel, two days before the attorney general's reply memorandum was due, filed as an addition to her brief a memorandum of 38 legal size pages entitled "Memorandum on history of labor and the law in the Territory of Hawaii," 33 pages

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[100] See the topic "Political incompatibility," pages 57-61 of the report dealing with the west coast, *supra,* note 97, where the communist question is discussed, and compare, infra, the report of Senator Cordon made in 1948, a considerable period after the date of the criminal prosecutions but prior to the hearing below.

Senator Cordon's report is the first mention of the communist question in the congressional committee material dealing with Hawaii. Senator Cordon, chairman of the subcommittee on territories and insular affairs, filed this report with the full senate committee on April 2, 1948, 80th Cong., 2d Sess., based on hearings held in Hawaii in January 1948 and in Washington in April 1948. It is noteworthy that at the hearing held by Senator Cordon labor itself made charges of communist influence. See the A. F. of L. charges made against the ILWU. (Report of hearings before the subcommittee on territories and insular affairs of the committee on public lands, United States Senate, 80th Cong., 2d Sess., on H.R. 49, p. 27.) Senator Cordon concluded that the communist question was no different in Hawaii than elsewhere, but Senator Butler has opposed statehood for Hawaii on the basis of the communist question. See Congressional Record of May 20, 1948, 80th Cong., 2d Sess., Vol 94, pp. 6313-6330; Report of June 21, 1949, Vol. 95, Cong. Rec. No. 112, p. 8328. It is opposition of this character, and not dissatisfaction of Congress with labor relations or other aspects of Hawaii as a modern American community, which has held Hawaii back in its ambitions for statehood.

It is likely that in the near future there will be another congressional committee investigation in Hawaii.

of which were devoted to the period from 1850 up to the time of the sugar and pineapple strikes, 3 pages were devoted to those strikes but by no means confined to the record, and 2 pages were devoted to other matters outside the record. The attorney general assumed that the court would confine itself to the times involved and to the record, but that does not seem to have been the case.

Land ownership; haoles. Hawaii's land ownership problems were brought into the picture by the court (R. 382-383). The only possible relevancy is in connection with the fact that the sugar and pineapple industries are examples of industrialized agriculture. This has nothing to do with land ownership; as a matter of fact the authority cited by the court shows that nearly half the land in sugar production is leased.[101] In fairness to the people of Hawaii it should be stated that Congress itself removed the limitation on corporate land holdings contained in the original Hawaiian Organic Act.[102]

The court identified the entrepreneur, landowning, land-controlling group with the haole group, using "haole" as a mark of rank (R. 387-388). Here again the court fails to consider whether there is anything unique in the situation. The authorities cited by the court show that there has always been a tendency on the part of people of old American stock

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[101] Of the ten largest private owners, mentioned by the court, the largest is the Bishop Estate, a charitable trust. 1946 statehood hearings cited *supra,* note 96, at page 548 (paragraphs 13 and 14) and page 762.

[102] Section 55 of the Hawaiian Organic Act, as originally enacted, 31 Stat. 141, c. 339, contained the following, which was deleted by the Act of July 9, 1921, 42 Stat. 116, c. 42, s. 302.

> "*Provided,* that no corporation, domestic or foreign, shall acquire and hold real estate in Hawaii in excess of one thousand acres; and all real estate acquired or held by such corporation or association contrary hereto shall be forfeited and escheat to the United States, but existing vested rights in real estate shall not be impaired."

to assume superiority over newer immigrants, but in Hawaii there has been less stress resulting therefrom than in most places; racial relationships have been exceptionally good.[103] The important thing is that:

> "To a far greater degree than in most other regions of European settlement, Hawaii has established and maintained the capitalistic principle of freedom—freedom to compete for a place in the economic order, irrespective of race and origin. The several immigrant peoples, which have in turn started life on the lower levels of plantation labor, all have risen to higher places in the occupational pyramid as rapidly as conditions would permit. * * *"[104]

In any event there was no relevancy in remarking upon "extreme measures whether undertaken by the employees or by the employers" (R. 388). These cases were brought by government officers. The court found no concert of action between those officers and the employers. There is no haole dominance in the holding of government offices.[105]

1929 amendment of the unlawful assembly and riot act. We have pointed out that the court did not hold unconstitutional the twenty years' maximum punishment, contained in the unlawful assembly and riot act prior to the 1949 amendment (point III-C, pp. 70-71). The court said this provision was "among the statute's disabilities" (R. 460).

Instead of squarely facing the issue as to the constitutionality of this provision the court went to the newspapers

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[103] Adams, Interracial Marriage in Hawaii, pp. 119-120; Burrows, Hawaiian Americans, pp. 208-209; Lind, An Island Community, pp. 273-274.

[104] Lind, An Island Community, *supra*, p. 245.

[105] It is interesting to note that Joseph Kaholokula, a union official, defendant in Criminal No. 2365 and a plaintiff in No. 12301, was at the time of the trial a member of the territorial legislature (R. 1236).

of twenty-five years ago to infer the reasons for the 1929 amendment (R. 388-390). The court referred (R. 388) to a riot at Hanapepe on the island of Kauai in which 20 persons were killed, said that this riot arose out of a labor dispute, and inferred that the sentences imposed on the participants had expired just as the legislature convened in 1929 "and there was evident fear that when these men returned to their people on Kauai some form of demonstration or labor trouble might result" (R. 390). This is one of the factors (R. 482) which led the court to infer lack of good faith of the prosecuting officers, more than 20 years later.

It is evident that a very serious riot did occur in 1924. Where persons are killed in a riot some states[106] make every person guilty of participating in the riot punishable in the same manner as a principal in such homicide. Of course a statute which does not differentiate between the objects or effects of the riot is not the same as one that does; undoubtedly very great leeway was given to the court by the 1929 amendment, which later was affected by the indeterminate sentence law as we have shown (note 41, appendix p. 174). But the policy of the statute was not for the court.[107] The legislature was the judge of the gravity of the offense, and the purpose to deter the recurrence of such offenses, if such was its purpose, was a valid purpose.[108]

Employment of privately paid special prosecutors in 1924. The court remarks that the 1924 riot prosecutions were conducted by a special prosecutor "employed, albeit

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[106] Oregon Compiled Laws 1940, sec. 23-802, Appendix VI, p. 209; North Dakota Revised Code 1943, sec. 12-1904; South Dakota Code of 1939, sec. 13-404.

[107] *Daniel* v. *Family Security Life Insurance Co.,* 336 U.S. 220; *Cohen* v. *Beneficial Industrial Loan Corp.,* 337 U.S. 541, 550; *Goesaert* v. *Cleary,* 335 U.S. 464, 466-467; *Dominion Hotel* v. *State of Arizona,* 249 U.S. 265.

[108] *Howard* v. *Fleming,* 191 U.S. 126, 136; *Collins* v. *Johnston,* 237 U.S. 502, 510; *Pennsylvania* v. *Ashe,* 302 U.S. 51, 54-55.

in the name of the Territory, by the planters" (R. 389). Here again the court treats as unique to Hawaii, what in fact is not unique. Many states follow the practice of allowing private counsel to assist the prosecution. 18 C.J. 1336, sec. 79; 27 C.J.S. 433, sec. 28b; 42 Am. Jur. 241, sec. 10. We agree that the practice is undesirable in cases growing out of labor disputes. No counsel employed by any private party was employed as special prosecutor in any of the criminal prosecutions here involved, or in any of the other criminal proceedings arising out of the sugar and pineapple strikes. The matter is wholly irrelevant.

Findings of interference with ILWU's success in strike action by reason of enforcement of unlawful assembly and riot act and the conspiracy statute. The court found true certain statements of Jack W. Hall, which are reviewed below. These statements were mere conclusions as to the effect of the criminal proceedings, and the court erred in giving credence to these conclusions.

The first such statement by Jack W. Hall concerns the charges made during the sugar strike under the unlawful assembly and riot act. Mr. Hall conceded that the use of the statute did not affect the success of the sugar strike (R. 1151). The court found that the sugar strike was won by the union (R. 391). The record shows that picketing continued all during the sugar strike all over Maui, except as restricted at Paia by reason of the temporary restraining order involved in the case of *ILWU* v. *Wirtz*[108a] (R. 1173-1177, 1659-1660, 1709-1710). The union also picketed during the pineapple strike (R. 1178, 1633-1634).

As to the pineapple strike, the court found: "This strike was lost by the union primarily because of the enforcement of the unlawful assembly and riot act" (R. 391). The

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[108a] 170 F. 2d 183 (C.A. 9th), cert. denied 336 U.S. 919, No. 11568 in this Court.

court based this on Jack W. Hall's statement (R. 382) which was as follows:

> "Q. Did it [the Unlawful Assembly Statute] have any effect on the pineapple dispute?
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> "A. I think it was perhaps the major factor which caused us to lose the strike. I was, in pineapple as in sugar, in all discussions involving around the strategy of the union from day to day, and when the strike leaders on Lanai were arrested along with a large number of the workers and faced with these severe penalties, the workers on all islands were very much affected and felt that it would be impossible to win the strike facing constant mass arrest, and therefore it became the judgment of the strike committee in which I participated that the strike should be called off at once until a determination was made on whether ordinary picketing could be carried on in this Territory without being subjected to severe felony charges."
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> (R. 1151-1152.)

It will be observed that Mr. Hall testified "the strike leaders on Lanai were arrested along with a large number of the workers." His testimony was that the union could not win the strike facing "constant mass arrest" under "severe felony charges." The fact is that in Criminal No. 2413 only eleven arrests were made as a result of the Kaumalapau Wharf incident out of well over 100 persons involved, and in Criminal No. 2412 only five arrests were made as a result of the Kalua incident. These were the only arrests under the unlawful assembly and riot act until August 1, 1947, when a large number of arrests was made in Criminal No. 2419. *That was more than two weeks after the pineapple strike was over.* Moreover, Mr. Hall testified that "the workers on all islands" were very much affected by the Lanai arrests "and therefore it became the judgment of the strike committee in which I participated that the strike should be called off." This is sheer impossibility. According to plaintiffs' own allegations (R. 9) the Lanai

arrests (other than those above mentioned which came two weeks after the strike was over), were made on the day that the strike ended. The strike strategy committee could not have acted on the basis of the reactions of "the workers on all islands" to these arrests. The inescapable conclusion is that the pineapple strike was not lost for any of the reasons given by Mr. Hall.

We already have called to the attention of the court the irrelevancy of this whole line of testimony. The union did not have the right to win the strike by such tactics as were displayed at Kaumalapau Wharf and in the ambush at the Kalua brothers' room. That was not "ordinary picketing," no matter how characterized by Mr. Hall. It was not "a strike properly conducted" which the court refers to as a legitimate weapon in the armory of labor (R. 478).

The last of Mr. Hall's testimony, to which the court gave credence, concerned a contemplated longshoremen's strike. Mr. Hall testified:

> "* * * The longshoremen under their present contracts with the waterfront employers had a recent wage opening and at that time attempted to raise the wage rates for longshoremen in the Territory to the wage rates on the mainland, the longshoremen in Hawaii being the lowest paid in any American seaport. The membership was extremely militated by the negotiating committee when it got together in the face of the employers' refusal to bring the wage structure up in the Territory and had to make a decision on whether or not to accept the employers' proposal or to strike, arbitration being refused, and in the discussion with the negotiating committee we had to come to the conclusion that it would be in effect suicide for the union to attempt to strike with such a statute hanging over their heads, a statute that could easily be invoked and has been in our opinion, or where there have been minor disturbances that might have been provoked by agents provocateur." (R. 1153-1154.)

This testimony was objected to as purely speculative (R. 1153) and obviously was. It was error to receive it. Nothing could be more speculative or baseless than the assumption that the statute might be invoked because of minor disturbances provoked by agents provocateur.

As to the conspiracy statute, mentioned by the court (R. 381), that did not come into the picture until long after the sugar and pineapple strikes were over, and was not mentioned by any witness as a cause of fear.

Incidents which the court held should have been prosecuted under the assault and battery statute. The court said that the Unlawful Assembly and Riot Act was inappropriate in connection with the Kalua brothers and the Yamauchi incidents, and that a statute like the assault and battery statute would have been employed "if the motive for prosecution had been only the maintenance of good order in the community and the punishment of minor law breakers" (R. 411). This bears out our previous statement that the court was insistent upon the use of a misdemeanor statute. At page 481 it is revealed that "the repeated selection of the unlawful assembly and riot act with its heavy penalties as vehicles for the prosecution of comparatively minor infractions of the criminal laws" was deemed by the court to constitute bad faith.

This is an instance of the court's arrogation of supervisory authority. We have shown that a federal court does not have such authority even over the United States attorney. Obviously if bad motives can be held relevant to the prosecution and then inferred from disagreement with a prosecutor's exercise of his discretion as to the criminal statute to be invoked, the prosecutor's discretion no longer is his own.

The treatment which the strikers handed out to the Kalua brothers was a very serious abuse of freedom. They had a right to work, even if they were strikebreakers; this

was a liberty[109] protected by the Constitution. For twenty-five men to go to the place of abode of two others, ambush them as they arose from their beds, and beat them up with the object of terrifying them into subjection to the will of the attackers was something more than an ordinary assault and battery. If such acts had been perpetrated by organized gangsters seeking protection money or by the Ku Klux Klan seeking to terrorize negroes who had "white man's jobs," the difference between this and a street brawl would be clear enough. The difference remains though the acts were committed by union members.

The Yamauchi incident took place during the sugar strike. Yamauchi was strike strategy committee foreman for the union (R. 1216). He made a statement to the police in which he admitted sending eight cars of men out to gang up on three individuals, Backman, Nelson and Wright, reported to him to be irrigating the sugar cane. Yamauchi told his men if those who were irrigating would not go home, to take off their clothes. He also told his men that if the men irrigating should fight against them to use their own judgment. He afterwards was informed that his men beat up one of the men irrigating and gave another a licking (R. 1763-1774). The court found that Yamauchi's acts "were a contributing, if not the primary, cause of an assault and battery" (R. 401). Again the court did not take seriously the ganging up of eight cars of men on three persons. The prosecutor did. The incident was not involved in these cases and had been disposed of before these suits were brought, as found by the court (R. 402). It was brought into the record over the objections of the defendants (R. 1192) and was irrelevant.

Disagreement between the police and the deputy county attorney as to the charges to be used. The court remarks

[109] See point V, footnote 60, *supra,* and see *In re ILWU, Sunset Line & Twine Co.,* 79 N.L.R.B. No. 207, note 85, Appendix p. 184.

on the fact that Assistant Chief of Police Freitas of Maui County had no intention of invoking the Unlawful Assembly and Riot Act at the time of the Paia incident[110] (R. 398-399) and he read to the crowd there from the loitering law (R. 393-394). It is worthy of note that a copy of the Unlawful Assembly and Riot Act had been circulated with other laws before the strike.[111]

There was evidence that the strikers at Paia meant to go as far as necessary to stop the return to work of the five men seeking entrance to the mill.[112] And it certainly was not a foregone conclusion that the push of the massed group of over 200 persons against the small group of men and police would recede when Freitas called out that the men were going back to their side of the street, for a force so started cannot always be stopped. But it was a foregone conclusion what would have happened had Freitas acted differently.

A prosecuting officer, in determining what charges are to be brought, obviously is not bound by an on-the-spot

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[110] The court also says there was no intention on the part of Assistant Chief of Police Freitas to use the Unlawful Assembly and Riot Act at the time of the Kaumalapau Wharf incident (R. 481). There is no evidence to support this. Assistant Chief Freitas yelled at Barbosa's men to stop. Obviously he did not have time to read the Riot Act, so sudden was the rush of men onto the wharf. He had only five men with him and was helpless (R. 1617, 1614).

As to the Court's statement (R. 481) that no arrests were made during the course of the Paia or Kaumalapau incidents, surely the court does not mean to infer that the police intended to make no arrests for such incidents.

[111] R. 1653-1654, 1274, referring to plaintiffs' exhibit 11, which contained the Unlawful Assembly and Riot Law but was not printed in full. Appellant asked that the printed record describe the contents of this exhibit (R. 1966-1967); it was not so printed but the contents sufficiently appear from Mrs. Bouslog's statement at R. 1276.

[112] See the court's findings at R. 392-393 that in preliminary conversations Kaholokula (an officer of the union, R. 1237) stated that if the five men tried to cross the picket line there would be violence and bloodshed "police or no police."

decision of a police officer. The loitering law is quoted in footnote 20 of the court's opinion (R. 393-394) where the court remarks it to be very similar in tenor to that held unconstitutional in *Territory* v. *Anduha,* 48 F. 2d 171. Whether or not the legislature succeeded, in the enactment of the present loitering law, in curing the defects in the old loitering law, it is certain that loitering laws have been a very fruitful subject of litigation.[113] We do not see how the deputy county attorney can be criticized because he disagreed with the police as to the use of this law.

Arrests characterized by the court as mass arrests. The arrests following the Paia incident and the first Lanai incident (Kaumalapau Wharf incident) were characterized by the court as "in mass" and as throwing a "very wide net" (R. 398, 406-407, 480). The Paia incident involved 200 or more men who massed together, when the mill whistle blew, to repel the police and employees seeking entrance to the mill, and the Kaumalapau Wharf incident involved well over 100 men rushing across the "kapu" line at Barbosa's signal to set upon the supervisory employees working on the wharf. The handling of incidents involving such large numbers presents grave problems. Of course the very reason for employing so many is to confuse, confound and intimidate.

The court did not find that innocent persons were arrested by officers who knew they were innocent. It found no lack of honor or personal integrity. The court did find, from the dismissal of sixteen persons from the complaint in Criminal No. 2419[114] out of a total of sixty-three

[113] See besides *Territory* v. *Anduha, supra, In re Bell,* 19 Cal. 2d 488, 122 P. 2d 22 (1942), and *Thornhill* v. *Alabama,* 310 U.S. 88.

[114] Four persons were dismissed at the opening of the preliminary hearing before the district magistrate and twelve at the conclusion of the preliminary hearing prior to the magistrate's decision (R. 145, 320; opinion, R. 406). The court remarks (R. 407) that Aki, one of the persons dismissed, was not a union man. But union men also

persons arrested for the Kaumalapau Wharf incident, that the police drew the defendants from a "very broad, indeed, the too broad field" (R. 480). This is tantamount to saying that the officers, confronted by the obstacles to identification of the guilty presented by violence perpetrated by large numbers of persons, should have made only a few arrests, and that the mistakes which occasioned the dismissal of these sixteen persons thereby would have been avoided. To move from this to a finding of an ulterior purpose to attack the labor movement is to assume the same mistakes would not have been made had the mass violence been committed by others. But such fact cannot be assumed. *Snowden* v. *Hughes,* supra, 321 U.S. 1.

The court erred (R. 481) in including in its consideration of "mass arrests" the incidents on the Island of Oahu, which were outside the County of Maui and concerned charges of obstructing the highway, not riot or conspiracy. (See *infra* under the heading "Incidents in the City and County of Honolulu".)

The court referred to the fact that in the case of the Kaumalapau Wharf incident pictures were taken before and after the incident as well as during it and all the pictures were used (R. 481, 406). This matter of the photographs means nothing without a case by case examination as to how the pictures were used, i.e., whether they stood alone as evidence and if so whether they were taken during the incident. The court did not undertake to do this. It recognized that it did not sit as a committing magistrate. No findings were made by the court as to the guilt or inno-

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were dismissed. The court also remarks that in the case of Aki a police officer expressed surprise at a non-union man being among the defendants. This police officer's comment is explained by the circumstances; the Kaumalapau Wharf incident obviously was a case of planned violence headed by union police and directed against supervisory employees endeavoring to load a barge during the pineapple strike.

cence of the persons before it. This is particularly important in connection with the summary which follows.

To summarize: These arrests involve serious questions which nevertheless belong in the territorial criminal court, not the federal equity court. The cases stand as follows. That criminal acts occurred which the court below does not condone; that all of the persons charged with those acts have come into court and made common cause claiming that, in the statutes invoked, there is no proper standard by which their accountability for those criminal acts may be judged; that they do not ask the equity court to find among them as to guilt or innocence, and when the government officers ask for particulars as to their vague claims of peaceful picketing so as to show as to each individual plaintiff what his claim is[115] this request is opposed and the court supports the plaintiffs in refusing to give particulars; that the court makes no findings as to guilt or innocence, and the court's theory is that the unlawfulness of plaintiffs' conduct is immaterial to the right to relief; that the court recognizes that ordinarily the criminal court would pass on the constitutionality of the statutory standard and the manner in which it applies but concludes that in these cases the territorial criminal court is not to be entrusted with this function. The reason why the federal court would not let the criminal court perform its normal functions was that the Supreme Court of Hawaii had held that the statute contained a constitutional standard for judging accountability for the criminal acts, the criminal court would apply that standard, and the trial court disagreed with the Supreme Court. The trial court thought that it could use a bill in equity to usurp the appellate jurisdiction of this Court. The cases then would have gone to the Supreme Court of the United States (where the appeal lay had the court been a statutory three-judge court as

[115] (R. 111; No. 12301, R. 55.)

it thought it was). But the Supreme Court of the United States has been insistent upon receiving questions such as this via the criminal courts where the state or territory's own construction of the statute has been adopted and can be tested in the light of its application, and a bill in equity cannot be used to usurp appellate jurisdiction (point III-B, supra).

The holding that excessive bail was required in many cases. The court reviewed the amount of bail set for those held for the grand jury. In the Kalua brothers incident this was $1,000 for each of the persons so held. The court also refers to the testimony of Pedro De la Cruz that for two of the eleven persons in the group arrested after the Kaumalapau Wharf incident bail was set at $1,000 apiece, for three of this group bail was set at $500, and for the remainder $250 apiece (R. 409-410, 481). The proceedings were on Lanai, while bail was set by Judge Wirtz[116] of the second circuit court, whose court is on the island of Maui (R. 96-97, 91). Hence, in order to hold a hearing on the amount of bail, the persons involved would have to be taken from the island of Lanai to the island of Maui by plane, which as the record shows they sought to avoid (R. 1300, 1301). By moving for reduction of bail they could obtain a hearing at a time convenient to themselves. The lower court seems not to have understood the situation.

Again the court makes a non-judicial approach to a legal issue. Excessive bail is contrary to the Eighth Amendment, but plaintiffs presented no issue under this amendment. If they had, the first question would have been as to the proper forum and the second would have been as to whether the bail was excessive within the meaning of the Eighth Amendment. Appellate courts have never condemned as excessive $1,000 bail; the federal trial court is more condemnatory in its review of the territorial circuit court, over

[116] See section 10735 of the Revised Laws of Hawaii 1945.

which it had no appellate jurisdiction, than an appellate court actually having powers of review would have been. In an address by the Honorable Leon R. Yankwich, United States District Judge of the southern district of California, 7 F.R.D. 271, Judge Yankwich says that the higher courts have declined to interfere in the amount of bail except in rare instances.[117]

On the factual side an interesting feature of this part of the case is Mr. De la Cruz's testimony that he borrowed from the businessmen on Lanai in order to raise bail (R. 1302). This is an example of what is wrong with the court's picture of the "mores" of the community. As above noted the court proceeded on the theory that the community presents a solid front against this union and all other labor organizations and has done so throughout its history. The island of Lanai, here involved, was described by the court as "entirely populated by employees of the company and their families" (R. 402), and therefore if the court were right in its assumptions, this island would present an extreme example of an employer-dominated community. Yet Mr. De la Cruz produced between $7,000 and $10,000 in cash from Lanai businessmen to use for bail for his men.

Incidents in the city and county of Honolulu. Plaintiffs were allowed to bring into record two criminal proceed-

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[117] Judge Yankwich cites for the proposition that the fixing of bail rests largely in the discretion of the judge admitting the person to bail, an opinion of this Court, *Connley* v. *United States,* 41 F. 2d 49. (See also 41 Yale L.J. 293, 296-297.) Speaking of the conscientious objectors cases, Judge Yankwich mentions that he did not reduce as excessive a bond of $1,000 fixed by the United States commissioner, for he did not consider this an abuse of discretion even though he himself, in an instance where a bond of $5,000 had been fixed in such a case, had fixed the bond at $500. Judge Yankwich characterizes as "normal" bail of $500 for each person prosecuted in the Jehovah's Witness cases, where of course acts of violence were not even involved.

ings in the city and county of Honolulu, involving incidents during the pineapple strike, i.e., the Sibolboro incident and the Turner's Switch incident. It was objected that the county attorney of Maui had no jurisdiction and that there was no offer to show that the attorney general directed the placing of charges as to these incidents (R. 1218-1220, 1566-1567). The court stated it entertained some doubt in the matter but that it would receive such evidence subject to a motion to strike (R. 1219), and the motion was denied in the opinion (R. 409, note 45).

Evidence should not have been received as to matters in other counties, for the reasons shown in Point V, *supra.* There was no concert of action among the different prosecutors of the several counties, and no offer to show that the attorney general acted in the matter. Actually the present attorney general was not even in office (R. 1731-1732).[118] Plaintiffs' testimony only showed, as might have been supposed, that these cases were handled by the police of the city and county of Honolulu and the public prosecutor of the city and county of Honolulu (R. 1221, 1222, 1565). These incidents did not even involve use of the unlawful assembly and riot act or the conspiracy statute, the charges being obstructing of a highway (Opinion, R. 409). The court made much of the large number of persons involved of whom only one was finally proceeded against, the other charges being nolle prossed (R. 481), but it was the public prosecutor of the city and county of Honolulu who nolle prossed these charges (R. 1565). Obstructing the highway[119] is a minor offense prosecuted in the district magis-

[118] It was shown that the only action taken by Attorney General Ackerman in the matter was to file an information, based on the Turner's Switch incident, for contempt of the temporary restraining order considered by the United States District Court in *Hall* v. *Hawaiian Pineapple Co., Hall* v. *California Packing Corp.,* 72 F. Supp. 533 (R. 1565, 1566, 1725-1730; Defendants' Exhibit O).

[119] Section 11103, R.L.H. 1945.

trate's court where there is a large volume of cases. As to the wide discretion commonly exercised by prosecutors in disposing of such cases, see 50 Harv. L.R. 583, 597.

Matters in the city and county of Honolulu being so irrelevant, and the court not having ruled on the relevancy thereof at the trial, the defendants confined their proof to a showing that the prosecutions were not for peaceful picketing. It was shown that in each incident there was obstruction of the highway and in the Turner's Switch incident there was also involved the use of physical violence (R. 1306 as to the Sibolboro incident, R. 1728-1729 as to the incident at Turner's Switch). Defendants produced a police officer who was a witness to both incidents and all plaintiffs' counsel cross-examined him on was whether there was a woman involved at Turner's Switch (R. 1730-1731).

Absence of prosecutions against others under the Unlawful Assembly and Riot Act. That laboring men who violate the criminal law are prosecuted under a more severe statute than non-laboring men, is the backbone of the court's "bad faith" concept. Hence this concept is essentially discrimination in the use of the statute. As shown in point V the court erred (R. 411-413, 481-482) in finding that during the life of the Territory no one has been prosecuted under the Unlawful Assembly and Riot Act anywhere in the Territory except in connection with labor disputes. The court could not reach the conclusion of "bad faith" from the fact that in Maui County during the last thirty years there was only one unlawful assembly and riot act prosecution prior to those during the sugar and pineapple strikes and said prior prosecution also arose out of a labor dispute, unless the following additional facts were present: similar incidents, involving non-laboring men, and use of a statute less severe than the Unlawful Assembly and Riot Act. Without these additional facts, the evidence does not

add up to discrimination. The additional facts cannot be found in the record. Hence, the court must have assumed them. Since, as we have shown in point V, such facts cannot be assumed but must be proved and there was no such proof, the discrimination necessary to the court's "bad faith" concept was not established.

Procurement of the second indictment in Criminal No. 2365. The court noted (R. 401) that there had been no remittitur by the Supreme Court to the circuit court in the *Kaholokula* case involved in No. 12301 before the matter was referred to the grand jury for the bringing in of the second indictment, the first indictment having been held by the Supreme Court fatally defective as to form. The court at R. 481 remarks on "the haste with which the prosecuting officers of Maui County procured the second indictment." The facts were, as shown in the Statement of the Case, *supra,* page 8, that the criminal cases involved in No. 12300 were to come before the grand jury at 9:00 a.m. on December 2, 1947, but on December 1, 1947, at 7:00 p.m. plaintiffs obtained an ex parte temporary restraining order to prevent the grand jury from proceeding. This order was not served on the county attorney until the very day of the grand jury session December 2, 1947 (R. 30). The grand jury, as shown in point XI, is convened from all parts of the county of Maui. The court seems to feel that in the haste of the moment it was the duty of the county attorney to anticipate that there was a second federal suit coming up, although only one had been filed and the parties in Criminal No. 2365 were the very parties who had litigated the constitutionality of the unlawful assembly and riot act in the Supreme Court.

This is another instance where the court did not directly deal with the issues. That the county prosecutor proceeded before the remittitur was sent down was a mere irregularity

(*In re Shibuya Jugiro,* 140 U.S. 291, 296). Therefore, the court should have treated the indictment as regularly returned and proceeded on that basis in its further consideration of the question of opportunity to challenge the grand jury by way of a plea to the indictment. This is considered in Point XI, where we show that the local practice allows such a plea.[120]

Further errors in the admission and consideration of evidence. We have discussed, *supra,* our objections to the receipt of the evidence concerning the Yamauchi incident and the incidents in the city and county of Honolulu. We also have shown our objections to the receipt of the testimony of the witness Hall, speculating as to a possible longshoremen's strike. The court further erred in receiving evidence of the witnesses Rania, De la Cruz and Kawano, concerning the effect of arrests on the union membership, since such testimony was argumentative and merely the conclusion of the witnesses. These objections constitute a portion of Specification of Errors 17 and the remainder will now be considered together with specification 16k.

Since the merits of the labor dispute were irrelevant (point VII, note 85 in the appendix, and *supra* this point), the court further erred in receiving evidence as to refusal of employers to arbitrate wage issues and in considering such matter in its opinion (R. 381). For the same reason it was error to consider the wages of sugar plantation laborers, and furthermore the court's handling of the facts

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[120] Although the first indictment in the Paia case is no longer involved, we take exception to the court's statement that "one man named as a defendant in the indictment" was dead at the time. The court says this man was Jose Pias (Opinion, R. 397, note 23). Exhibit 9 shows that the name of Jose Pias was struck by the grand jury foreman. (The name was not printed by the printer, R. 1240-1247.) At the trial it was called to the court's attention that the name was struck out and that the man was not indicted; the court at that time said the indictment would speak for itself (R. 1250).

was erroneous; since the figure of $1.84 in 1943 was merely a minimum wage, exclusive of bonus and perquisites (R. 1140-1147), and the figure of $8 at the time of the trial was the "approximate daily rate" (not minimum) inclusive of everything (R. 1159-1161), it is hardly fair to compare such unlike figures.

XI.

THE COURT ERRED IN ENTERTAINING THE GRAND JURY ISSUE, AND ERRED IN CONCLUDING THAT THE GRAND JURY WAS CONSTITUTED ILLEGALLY.

A.

In No. 12300, the grand jury issue is moot.

The complaint in No. 12300 sought to obtain a review (R. 11-19, 327-334) of the rulings of the Honorable A. M. Cristy sitting as a substitute judge in the second judicial circuit upon the motions and challenges to the 1947 grand jury made by the defendants in Criminal Nos. 2412 and 2413.[121] On December 1, 1947, after denial of these motions and challenges, said defendants, plaintiffs in No. 12300, brought suit below to restrain said grand jury from acting. At a hearing of December 10, 1947 in the court below, the deputy county attorney called to the court's attention that the challenged grand jury would be out of office in another month; there was considerable discussion concerning the unlikelihood that the case would be heard before the grand jury went out of office, so that if the temporary restraining order meanwhile prevented the grand jury from acting the grand jury challenge inevitably would be mooted (R. 1085-1096). The court nevertheless continued in effect the temporary restraining order (R. 100-103). The challenged grand jury did go out of office on

[121] It was stipulated that these challenges might be deemed to have been made also by the remaining individual plaintiffs, i.e., the defendants in Criminal No. 2419 (R. 339, par. 6).

January 12, 1948, without having acted, and when the case came on for hearing on April 23, 1948, the grand jury issue was moot.[122] The mootness was recognized by the court below as its decree is silent with respect to the composition of the grand jury (R. 543).

This is an example of the results of taking territorial criminal cases into the federal equity court. A considerable record was made on the challenges before Judge Cristy (R. 59-87, 567-1082) and if the defendants in the criminal cases wished to pursue the matter further this record should have been reviewed on appeal. The intervention of the federal equity court has made this impossible.

B.

In No. 12301, the court below erred in deciding that it could and should pass upon the composition of the Grand Jury.

Allegations of the complaint. Paragraphs X (No. 12301, R. 13) and XII (No. 12301, R. 16-19) of the complaint in No. 12301 alleged that the jury commissioners, in composing the 1947 Maui County Grand Jury, violated the following: (1) the Fifth, Sixth, Fourteenth and Nineteenth Amendments to the Constitution; (2) the Civil Rights Act; (3) section 83 of the Organic Act; and (4) sections 9791 and 9812, Revised Laws of Hawaii 1945. Plaintiffs alleged that the jury commissioners intentionally selected the grand jury list mainly from among the caucasian and employer groups and with regard to race, color and nativity, and intentionally excluded Filipinos and women.

After alleging the return, on December 2, 1947, of an indictment by said 1947 grand jury in Criminal No. 2365 against the individual plaintiffs (other than the class representative), the complaint alleged that said persons had been ordered to appear to plead to the indictment (No. 12301, R. 12-13) and further alleged that any attempt by

[122] Appendix, pp. 187-188.

plaintiffs to challenge the validity of the grand jury would be useless and futile (No. 12301, R. 22).

Motions and objections of defendants. From the inception of the case defendants not only attacked the jurisdiction of the court over the subject matter and the maintenance of a federal equity suit as a means of quashing pending criminal charges in the territorial court, but also specifically attacked the making of a collateral attack on the composition of the territorial grand jury in lieu of a challenge or plea in the criminal proceeding itself with appellate review thereafter (Return to Order to Show Cause, No. 12301, R. 39-42, parts I-IV; Motion to Dismiss and for Summary Judgment, No. 12301, R. 64-67, part VI; objections to admission of evidence concerning the grand jury, R. 1129-1132, renewed as going to entire line of testimony, R. 1370).

The opinion and the decree of the lower court. The court below decided (R. 495) that it had power under section 1343 of Revised Title 28[123] to decide whether plaintiffs had been deprived of rights guaranteed to them by the Constitution of the United States by reason of the methods employed in the selection of the 1947 Maui County Grand Jury, and that in any event it should determine the grand jury issue for the reason that it was a court of equity, it had acquired jurisdiction on adequate grounds, and the issue was a material one (R. 496). The lower court further concluded that the grand jury was constituted illegally (R. 508), holding that Filipinos had been deliberately excluded (R. 509) and that there had been a "deliberate substantial exclusion" of wage earners (R. 509) and a "deliberate substantial weighting" of the list in favor of "haoles" (R. 505) or the "employer-entrepreneur which includes the haole group" (R. 509). The court decreed that the indictment

[123] This section is set forth in note 15, appendix p. 165.

at Criminal No. 2365 was void, and should be held for naught (No. 12301, R. 96, paragraph XII).

A grand jury challenge cannot be initiated collaterally. The grand jury matter presents an attempt by the defendants under indictment in Criminal No. 2365 to challenge the composition of the territorial grand jury by a collateral proceeding in a federal equity court in lieu of proceeding in the territorial court, for no better reason than that they prefer to proceed in the federal court and are of the view that it would be futile to proceed in the territorial court. Not one of these persons has attacked the grand jury in the territorial court. If this Court affirms the decision below, it will be the first time that a grand jury challenge has been permitted to be initiated by a collateral proceeding in a federal court.

The pleadings and proof in No. 12301 reveal conclusively that only this single pending criminal prosecution is involved. The attack made by the complaint was directed to the 1947 grand jury which had returned the challenged indictment but was about to go out of office when suit was brought below and did go out of office long before the hearing below. Even the lower court did not believe it had power to remove the jury commissioners (R. 512) and the complaint neither sought such relief nor made any allegations concerning the 1948 or other grand juries.

The contentions previously presented may render it unnecessary to go into the further matter here presented, i.e., that a grand jury challenge cannot be initiated collaterally. To summarize the contentions previously presented as they apply to the grand jury matter: The ILWU and the class representative have no interest, cognizable as such, in the 1947 grand jury challenge.[124] The individual plain-

[124] Neither was a "person held to answer a charge for a criminal offense" (section 9812, Revised Laws of Hawaii 1945, appendix VII). The filing of suit in federal court did not give either the ILWU or

tiffs did not establish jurisdictional amount and are dependent upon the applicability of paragraph (14) of former section 24 of the judicial code, 28 U.S.C. 41 (14), now section 1343 (set forth in note 15, appendix p. 165). But former section 265 of the judicial code, 28 U.S.C. 379, now section 2283 (set forth in note 19, appendix p. 166) also applies and prohibits the federal equity court from enjoining the pending criminal proceeding (points I and VI-B, *supra*). The Civil Rights Act, 8 U.S.C. 43, made no exception to this prohibitory statute (point VI-C). To the contrary Congress provided a removal statute for the protection of equal civil rights; the removal statute often has been invoked in order to attack the composition of a state grand jury, but the Supreme Court has narrowly limited the removal statute to instances of inequality in the laws, and has insisted that attacks upon the administration of the laws proceed in the state courts (point VI-C; *Murray* v. *Louisiana,* 163 U.S. 101, 105, 106; *Gibson* v. *Mississippi,* 162 U.S. 565, 582; *Neal* v. *Delaware,* 103 U.S. 370, 386, 387; *Virginia* v. *Rives,* 100 U.S. 313, 321). The Supreme Court in the same way has narrowly limited the power of habeas corpus, the other power which a federal court possesses for intervening in pending state criminal cases (point VI-C). A federal equity court has no jurisdiction to intervene in pending state criminal cases, equitable relief being ancillary to the power of removal and not a separate ground of jurisdiction (point VI-A, also VI-C). For these reasons the federal equity court had no power to intervene in the pending criminal case and pass upon the composition of the

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Rania an interest which it or he did not have prior to the filing. By virtue of the case or controversy rule, federal courts do not render advisory opinions. *United Public Workers* v. *Mitchell,* 330 U.S. 75, 89; *Alabama* v. *Arizona,* 291 U.S. 286, 291; *United States* v. *Evans,* 213 U.S. 297, 300, 301. A, against whom no charge is filed, cannot complain that a grand jury which indicts B is not composed lawfully. *Gusman* v. *Marrero,* 180 U.S. 81, is an excellent illustration of this point.

grand jury which returned the indictment, but even if it believed an equity bill gave it all the jurisdiction which it would have under a petition for habeas corpus, the court should have heeded the admonitions of the Supreme Court that state court remedies first must be exhausted, and should not have exercised such jurisdiction (points VI-C and IX).

The foregoing principles are so basic that we have not been able to uncover a single other case wherein a state court defendant tried to challenge the composition of a state grand jury in an 8 U.S.C. section 43 cause of action filed in a federal equity court.[125]

Proceeding now to the further proposition that a grand jury challenge cannot be initiated collaterally, and that this case presents an attempt to do so for no better reason than that the defendants in Criminal No. 2365 prefer to proceed in the federal court and are of the view that it would be futile to proceed in the territorial court, we first consider the opportunity of the defendants in Criminal No. 2365 to present in the circuit court for the second judicial circuit of the Territory of Hawaii the question whether the 1947 grand jury was constituted legally.

Did these persons have an opportunity to challenge the grand jury prior to December 2, 1947? The court below held that they did not (R. 491-492) and we do not contest this part of the lower court's conclusion, although we disagree with the reasons given therefor by the court. But the controlling question is whether the defendants in indictment No. 2365 could have challenged the grand jury

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[125] See 24 Am. Jur. Grand Jury, section 30, page 854; 38 C.J.S., Grand Juries, section 25, page 1014; 52 A.L.R., page 919. It is noteworthy that: (1) the annotation in 52 A.L.R. 919, which sets forth the remedies for exclusion of an eligible class from a grand jury, does not mention an action under 8 U.S.C., section 43; and (2) the author of the comprehensive article on race discrimination in jury service, in 19 B.U.L.R. 413, does not even suggest such a remedy (despite an evident dislike for the present state of the law).

subsequent to December 2, 1947, when the indictment was returned.

Could these persons have challenged the grand jury subsequent to December 2, 1947, in the event they wanted to do so? The lower court (R. 492) indicated that, after the first retirement by the newly impaneled grand jury, the composition of the grand jury may not be attacked.[126] This is *not* the law of the Territory of Hawaii. *Territory* v. *Braly,* 29 Haw. 7, shows that the composition of the grand jury may be challenged by plea in abatement or by motion to quash the indictment or by demurrer to the indictment. *Kaizo* v. *Henry,* 211 U.S. 146 (1905), reveals that in the Territory of Hawaii the practice of attacking the composition of a grand jury by plea in abatement is of long standing. The federal court was obliged to accept as the local practice what the local courts have established it to be (see point III-B, *supra*). That the territorial statutes do not provide for the foregoing ways of attacking a grand jury is immaterial, for the practice is well established. The Supreme Court of the United States confronted with similar circumstances, has held that "When the defendant has had no opportunity to challenge the grand jury which found the indictment against him, the objection to the constitution of the grand jury upon this ground may be taken, either by plea in abatement or by motion to quash the indictment, before pleading in bar." *Carter* v. *Texas,* 177 U.S. 442, 447.[127]

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[126] The court said that individual grand jurors could still be challenged, but that was all.

[127] On the same page, the Supreme Court also stated that it had the right to determine for itself whether the federal question was properly presented in the state court and hence could be considered by it on appeal. Apparently it was this statement which persuaded the court below to the following language "But this raises a substantial federal question which, however, melts into the major contentions of the plaintiffs in the instant cases that they have been

Since these persons could have challenged the grand jury subsequent to December 2, 1947, is the possibility that such challenge would not have been successful a valid excuse for not trying it? In paragraph XVII of the complaint in No. 12301 (No. 12301, R. 22), plaintiffs allege that an attempt to challenge the validity of the composition of the 1947 Maui County Grand Jury on the grounds set forth in the complaint would have been useless and futile. Plaintiffs allege as reasons for such conclusion that: (1) the evidence and ruling would have been the same as the evidence and ruling in the hearing before Judge Cristy in Criminal Nos. 2412 and 2413; and (2) the order of court would have been the same as the order of court made by Judge Cristy (i.e., the challenge to the validity of the grand jury would have been denied). These allegations sound like a plea of "extenuating circumstances," made in an effort to justify the collateral attack on the grand jury through the medium of an action in federal court. Not only is this assumed futility factually unsound,[128] but moreover it is not the law that an opportunity to preserve constitutional rights may be neglected because deemed futile. Thus, in *McLeod* v. *Majors,* 102 F. 2d 128 (C.A. 5th), the petitioner contended in federal court that resort to the appellate courts of the state would have been useless because, in a prior case which did not involve the petitioner, the highest court of the state had decided adversely to the position which the petitioner

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denied their constitutional rights" (R. 493). This language is meaningless, but, if intended to state that the grounds for challenging the grand jury raise a substantial federal question and therefore the *district court* may consider the question, of course it assumes the very point in issue as to the right to make a collateral attack on a grand jury.

[128] It is reached only by indulging in a series of assumptions, i.e., an exact similarity to Criminal Nos. 2412 and 2413 in (1) issues, (2) evidence, (3) rulings on evidence, and (4) order of court; plus (5) affirmance by the Supreme Court of the Territory which had made no ruling in Criminal Nos. 2412 and 2413.

would have had to take on appeal. At page 129, the Circuit Court of Appeals said, "We do not consider this constituted exceptional circumstances warranting the release of Majors on habeas corpus." Similarly in *Mason* v. *Smith,* 162 F. 2d 336, 337 (C.A. 9th), this Court held against a contention that state court appeal was impossible because petitioner could not serve and file the notice of appeal in time, the court saying: "He should have made the effort and he must still make the effort * * *."

That a person indicted by an allegedly illegal grand jury must, if he would avoid being tried on the indictment, avail himself of his opportunity to challenge the grand jury in the criminal court by producing sufficient evidence at the proper time, and that if he does not do so, and is convicted, the conviction is *not void* but valid, is a point well established. *Andrews* v. *Swartz,* 156 U.S. 272, 276; *Kaizo* v. *Henry,* 211 U.S. 146, 148; *Hale* v. *Crawford,* 65 F. 2d 739, 745 (C.A. 1st), cert. denied 290 U.S. 674. Since the indictment is not void, the issue does not lie collaterally. Invoking of the Civil Rights Act cannot change this basic principle.

The court below (R. 495) assumed that, even if the grand jury issue was not a cause of action capable of standing on its own feet, nonetheless the court could hear and decide the issue along with the cause of action concerning the validity of the statutes. The court evidently had in mind the rule with respect to the joinder of federal and local grounds in a single cause of action (see *Hurn* v. *Oursler,* 289 U.S. 238, 246). But this rule never has been held to work a change in the nature of the issues so joined. Hence, if an indictment is not absolutely void because of the composition of the grand jury, joinder of the attack on the grand jury with something else cannot change the nature of the issue or make it lie collaterally. *Only removal of the case* into the

federal court could make the grand jury issue lie there, since it then would not be collateral. The court below really treated the case[129] as if it had been removed into the federal court, although it denied this (R. 495-496), conceding that it was not removable (R. 494-495).

To summarize, a person indicted by a grand jury which he believes to be constituted illegally, may not refuse to challenge the composition of the grand jury in the criminal prosecution and instead challenge its composition via a bill in equity, for two reasons: (1) equity cannot enjoin pending criminal proceedings; and (2) the organization of the grand jury may not be attacked collaterally. Where such a bill in equity is presented in the federal court, the exhaustion of state remedies rule is an additional reason for not entertaining the bill.

C.

The Court below erred in concluding that the grand jury was constituted illegally.

The Fifth Amendment, which is applicable in the Territory of Hawaii, guarantees to persons accused of crime the right to insist that the grand jury which indicted them shall have been duly constituted. At the outset, the concept (or requirement) of the jury as a cross-section of the com-

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[129] For example, the court would have entertained challenges to individual grand jurors for bias and prejudice if it had thought there was enough in the record to develop the matter (R. 512). But even the expansive ideas of the plaintiffs did not extend that far; they pleaded no such issues (see complaint, No. 12301, R. 4-26, and see defendants' objections to the grand jury line of testimony (R. 1131-1132). In fairness to Judge Cristy it must be said that the lower court's criticism (R. 499) of the scope allowed for the examination of the individual grand jurors in the Maui proceeding is not supported by the record of that proceeding. (See R. 949, "The Court [Judge Cristy]: The exception will be noted. You may proceed, Mr. Resner, along the line that you stated to the court you wanted information.", and compare R. 936-937 with the examination of the grand jurors, which begins at R. 950.)

munity must be discussed, both because it relates generally to all the alleged violations of due process and because a preliminary discussion of it will serve to clarify thought concerning a somewhat confused subject. In one form of words or another, the concept is referred to in the following Supreme Court cases: *Smith* v. *Texas,* 311 U.S. 128, 130; *Glasser* v. *U. S.,* 315 U.S. 60, 85; *Thiel* v. *Southern Pacific Co.,* 328 U.S. 217, 220; and *Ballard* v. *U. S.,* 329 U.S. 187, 192, 193. A careful examination of these cases reveals that the Supreme Court has attempted to point out how to fulfill the requirement only by specifying how it is not fulfilled. That is, the Court has not set forth any directions as to the method of operation by which jury selectors may be certain of fulfilling the requirement; instead, it has specified certain practices which, if followed by the jury selectors, will result in the composition of a jury which does not meet the requirement. Thus, for example, the Court has proscribed the intentional and systematic exclusion of: (1) Negroes (*Smith* v. *Texas, supra*); (2) daily wage earners (*Thiel* v. *Southern Pacific Co., supra*); (3) women, under certain circumstances (*Ballard* v. *U. S., supra*). It must be kept clearly in mind that the Court has not put a ban on any practice other than intentional and systematic exclusion.[130]

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[130] At R. 511 the lower court stated "The constitutional guarantee requires that no group in the community shall be excluded deliberately from jury service and that a grand jury panel shall constitute a fair cross-section of the country or locality from which it is drawn." If it meant thereby to indicate that there were two separate and distinct requirements, the court below misunderstood the applicable language of the Supreme Court of the United States. In the *Ballard case, supra,* 192-193, the Supreme Court quoted with approval the following language from the *Thiel case, supra*: "The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community. . . . This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and

Before examining whether what the jury commissioners did was wrong, it is first necessary to find out what they did. The jury commission consisted of the Honorable Cable A. Wirtz, Circuit Judge of the Second Judicial Circuit, and two persons selected by him; C. E. Chatterton, a Republican and a Maui County resident for 30 years, and Augustine Pombo, a Democrat who lived on Maui all his life (R. 703). The commissioners met more than eleven times, beginning in June, 1946 (R. 703). In the nineteen precincts farthest from the court house, they selected persons both for the grand jury list and the trial jury list on the basis of the information in the answers to the questionnaires[131] which they had sent out to the 1944 registered voters (R. 703).[132] In the other fourteen precincts, they selected such persons from the 1944 registered voters on the basis of information

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geographical groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups." This indicates that an "impartial jury drawn from a cross-section of the community" (the lower court's second requirement) is an American tradition or ideal, and that the prohibition of "systematic and intentional exclusion" (the lower court's first requirement) is a statement of that tradition in the terms of a practical rule for the guidance of those who select juries.

[131] The commissioners planned to send questionnaires to registered voters in all 33 precincts but decided to cover the outlying precincts, particularly the island of Lanai, first (R. 704-705).

[132] The lower court was of the opinion that "the questionnaires seem to have been employed for no purpose within the law in so far as the 1947 grand jury was concerned" (R. 508). The court failed to state that precisely the same questionnaire was used by the District Court of the United States for the District of Hawaii (R. 1830, as reprinted; this however was not a part of any exhibit but is submitted to this Court as a matter of practice in the Court below of which this Court may take notice). The court also rejected, without any statement of its reason therefor, the rational explanation that the particular questions (which the court seemed to believe had a bad purpose) were useful to trial attorneys in questioning petit jurors on voir dire (R. 759) (the commissioners also selected one hundred petit jurors, using the same questionnaires).

in the answers to old questionnaires, personal knowledge of a prospective grand juror, knowledge of his reputation in the community, or observation of him from past jury service (R. 705-706, 712-713). They had no arbitrary standards with respect to race, color, occupation or education (R. 789-791, 848). Their plan was to have on the grand jury list one or more jurors from each precinct, based upon the ratio of the registered vote in a particular precinct to the whole registered vote (R. 704).[133] The plan operated as follows: Suppose precinct No. 1 was allocated two grand jurors. When the commissioners went down the list of prospective grand jurors in precinct No. 1 and found two persons of whose qualifications they were reasonably well assured, they did not continue on down the list (R. 915). All the commissioners agreed on each selection (R. 704).

The alleged intentional exclusion of Filipinos. The basic United States statute with respect to racial discrimination in connection with jury service is now Revised 18 U.S.C., section 243 (formerly 8 U.S.C. section 44).[134] Although it speaks of race, color or previous condition of servitude, it was passed shortly after the Civil War (in 1875) to protect the newly-freed blacks. Thus, it is not surprising that almost all of the racial discrimination cases which we have found involved the alleged discrimination against blacks. Moreover, these cases arose in communities where nearly everyone was either white or black, and the blacks comprised a substantial proportion of the population. How-

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[133] Although the commissioners did most of their work before the 1946 registry of voters was compiled and hence used the 1944 registry (R. 762), the court below considered the 1946 list (R. 502), which was not, for practical purposes, available to the jury commissioners.

[134] Section 83 of the Hawaiian Organic Act, 48 U.S.C., Section 635, also places jury commissioners in the Territory of Hawaii under the duty to constitute a grand jury without reference to race or place of nativity.

ever, the Territory of Hawaii, melting pot that it is, contains persons who may be classed ethnologically as Caucasian, Mongolian, Polynesian, Malayan and Negro (or practically any combination thereof).[135] Furthermore, a Mongolian may be a Chinese, a Japanese or Korean, and a Polynesian may be a Hawaiian or a South-Sea Islander (Samoan, Tahitian, etc.). Under such circumstances, what is a "race" in the Territory of Hawaii for the purpose of racial discrimination in the composition of a grand jury? Must jury commissioners also be ethnologists? Is will be observed that no Korean, Hawaiian, Porto Rican or Filipino was on the 1947 Maui County Grand Jury list (R. 501) but there were Chinese, Japanese, and many persons of more than one racial stock (R. 1432-1436).[136] Is the absence of Koreans, etc., evidence of racial discrimination? The foregoing discussion is intended only to spotlight the fact that alleged racial discrimination in the southern states is a vastly different problem from alleged racial discrimination in the Territory of Hawaii.

Assuming for discussion but not conceding that Filipinos are a "race" as to whom there may be presented a contention of alleged racial discrimination in the composition of a grand jury in the Territory of Hawaii, the first problem concerns the facts which a plaintiff having the right to assert the claim,[137] must prove in order to justify

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[135] See Inter-racial Marriage in Hawaii, Romanzo Adams, Macmillan Company 1937, pages 18, 19.

[136] Plaintiffs concede that there were 7 Japanese, 4 Chinese, and 12 part-Hawaiians, or 23 non-caucasians (R. 1942-1943). They class the remainder as 27 caucasians, including 21 "haoles" and 6 Portuguese. As to use of the term "haole" see footnote 141 infra.

[137] In Fourteenth Amendment cases of racial discrimination a member of the excluded class is not required to prove prejudice, as Congress has forbidden such discrimination, so that a grand jury set up in defiance of its command is an unlawful one whether the Supreme Court thinks it unfair or not (*Fay* v. *New York*, 332 U.S. 261, 293). In all Fourteenth Amendment cases, the Supreme Court

a court in concluding that discriminatory exclusion existed. Such a plaintiff has the burden of proof. This was recognized by counsel for the plaintiffs and by the court (R. 1453). In the terms of the present case, this means that plaintiffs had the burden of proving that Filipinos were excluded because of their race (*Akins* v. *Texas,* 325 U.S. 398, 400). Proof that no Filipino was on the 1947 grand jury is not enough. There must be a clear showing that the absence of Filipinos was caused by discrimination (i.e., intentional and purposeful exclusion). Discrimination may be admitted by the jury selectors or proved by long-continued unexplained exclusion of eligible Filipinos (*Neal* v. *Delaware,* 103 U.S. 370, 397; *Norris* v. *Alabama,* 294 U.S. 587, 591; *Pierre* v. *Louisiana,* 306 U.S. 354, 361; and *Patton* v. *Mississippi,* 332 U.S. 463, 466).

The next step in logical sequence is to examine what plaintiffs proved and what the lower court thought they proved. In this connection it must be borne in mind that the application, not the validity, of the territorial statutes has been attacked. Territorial laws applicable to the selection of grand jurors provide that the jury commissioners in each circuit shall, after careful investigation, select each year fifty persons who are citizens, males, over 21, residents of the circuit, in possession of their natural faculties and not decrepit, intelligent and of good character, and who

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"has never entertained a defendant's objections to exclusions from the jury except when he was a member of the excluded class" and has not decided the question "whether lack of identity with an excluded group would alone defeat an otherwise well-established case under the Amendment" (*Fay* v. *New York, supra,* 287). These questions of prejudice and membership in the excluded class have been expressly left open in the cases concerning federal juries, which have been decided on the basis of the Supreme Court's power of supervision over the administration of justice in the federal courts (*Thiel* v. *Southern Pacific Co.,* 328 U.S. 217, 225). It is to be noted that the cases concerning federal grand juries were not decided under the Fifth Amendment's requirement of presentment by a grand jury.

can understandingly speak, read and write the English language (Sections 9791 and 9800, Revised Laws of Hawaii 1945, appendix VI). *Note that the statutes do not provide that the commissioners shall determine and list every person who is eligible and then the list of fifty shall be drawn by lot from those who are eligible.* To the contrary these statutes, like the Texas statutes involved in *Akins* v. *Texas, supra,* authorize the jury commissioners to exercise a wide range of choice. The constitutionality of conferring such a power of selection has been sustained, and, as above noted, is not under attack here. See *Akins* v. *Texas, supra.*

One way of establishing racial discrimination is by admissions of one or more of the jury selectors. In this case, not one of the three jury commissioners appeared as a witness before the lower court. Each had testified in the proceedings before Judge Cristy (i.e., in the challenges made at Criminal Nos. 2412 and 2413). Their testimony was stipulated into the record in this case, although objections to relevancy were not waived (No. 12301, R. 83-84, paragraph 9; R. 1129-1132). Thus, the court below had no chance to make the many observations concerning a witness which are based on seeing him on the stand and hearing him testify. So far as the jury commissioners are concerned, all the lower court had before it was about 200 pages of testimony (see R. 701-728; 737-793; 803-811; 825-884; and 885-936). Out of these 200 pages, the court found, in a nine-word statement of Commissioner Pombo, what seemed to it to be conclusive proof of deliberate exclusion of Filipinos (R. 505). When Pombo was asked for his "best answer" concerning the absence of Filipinos, he replied "We just have a lot of other men a lot better" (R. 850). The lower court evidently construed this answer as an admission that the jury commissioners excluded Filipinos *because they were Filipinos* (i.e., on the basis of race

or color or place of nativity). Possibly the fact that the court below did not see and hear Commissioner Pombo explains its complete misconstruction of this answer. For the information of this Court, the line of questions culminating in this answer is set forth in a footnote.[138] From

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[138] Q. Now this questionnaire was returned on October 8th, 1946, two months before the work was completed. You see October 8th, 1946? A. Yes. Q. Returned it before October 8th, 1946. This gentleman filled it out on the 28th of September, 1946, and this shows that a voter by the name of Joseph Dias Barona, who was born at Hilo, Hawaii, on October 8th, 1918, was 27 years old, and has been in the Territory all of his life, and is married and is a Filipino by origin—at least his father and mother are—and that he is employed as a chauffeur at the Naval Air Station and that his occupation was laborer and truck driver, and he was a student at St. Anthony's School and finished the 9th grade—did you investigate that man for Grand Jury service—duty? A. We probably did. We have had others a whole lot better than he was. Q. Others of Filipino nationality? A. No. Mr. Resner, I would like to—we going through a lot of trouble in going out picking nationalities. I can cut that off short. I don't pick a man by his nationality. I pick a man on his merits. If I going over the questionnaires, if I think he is a good man, regardless of whether he is Japanese, Portuguese or haole, I ask the rest of the Jury Commission to include him in the list. Q. How do you explain the fact that there has never been a Filipino serving as a grand juror on Maui? A. We haven't come to it. Q. Why not? A. He is just as well a citizen as anybody else—I don't consider him a Filipino either—we just haven't. Only 50 in the Grand Jury out of how many voters in 1945. Pretty hard to put them all on the Grand Jury. Q. Yes, but why is it that with a substantial portion of the labor force of Maui Filipino—and of course you recognize that the Grand Jury is supposed to be a cross-section and representative of the community? A. Well, it is. Q. It is supposed to represent all the groups in the community. A. It is. Q. And a large group of the community is Filipino. A. I don't consider that. I don't draw the color line. You are a haole, you might do it—I don't. Q. I am just trying to get the record straight. A. I pick a man on his merits. If he is a Hawaiian, Portuguese or Japanese—don't make any difference to me. Q. Try to answer the question, Mr. Pombo. A. We just didn't come to him. Q. A substantial portion of the population of Maui is Filipino, isn't it? A. Might be, I am not sure. Q. There isn't any question in your mind about it? A. I haven't looked at it. I can't give you any figures. Maybe. Q. Suppose in a few minutes I show you the figures from the United States Census. A. If you can show me the figures. Q. But you do concede, of course, that a substantial portion of the

the whole of Commissioner Pombo's testimony at this point, it becomes obvious that he was simply saying in his own language that he selected the persons who were in his judgment the best qualified with respect to the statutory qualifications for jurors. He expressly stated "I pick a man on his merits." Hence the word "better" in the nine words selected by the court, by prior definition of the witness had no racial significance.

Having in mind that the selection of jurors is a group, not an individual, decision, the lower court's reliance on Commissioner Pombo's statement is subject to the further criticism that it completely ignores the testimony of the other two jury commissioners. Both Judge Wirtz (R. 758) and Commissioner Chatterton (R. 926) testified in substance that no person was excluded on the basis of race or color or place of nativity. Moreover, of the fourteen Filipinos whose questionnaires were discussed in the cases before Judge Cristy, at least three were considered by the commissioners to be qualified (R. 857). On this point the strongest case plaintiffs could make was that the commissioners marked some questionnaires "questionable" where plaintiffs thought they should have been marked "qualified" (R. 1451). All this means is that if plaintiffs were the jury commissioners they would have exercised their judgment differently. Like the plaintiffs, the court below also wanted to act as the jury commission. It named three Filipinos as qualified for grand jury service (R. 502, footnote 94) [139] despite the fact that this was not the function of the court.

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labor force is Filipino? A. I wouldn't doubt that—I guess they are. I wouldn't know. I haven't seen any figures. Q. I want you to give me your best answer as to why there has never been a Filipino on the Grand Jury? A. We just have a lot of other men a lot better (R. 848-850).

[139] These were not the same three who were classified by the jury commissioners as qualified.

Another way of establishing racial discrimination is by proving long-continued exclusion of eligible members of the particular race. Along this line plaintiffs brought out from the witness Crockett, since 1919 and still at the time of the trial Deputy County Attorney for Maui County, that he did not believe there had been a Filipino on a Maui grand jury prior to the grand jury under attack (R. 1559). In the Maui proceedings plaintiffs brought out from the witness Pombo, a Maui County Jury Commissioner from 1934 to 1947 with the exception of 1945, that no Filipino had been on a Maui grand jury or grand jury list during that period of time (R. 843). In summing up, counsel for plaintiffs used a chart (not admitted in evidence) which set forth that in 1947 there were 10,509 Filipinos in Maui County, representing 18.8% of the population of the county (R. 1942), although the witness Reinecke testified that this was the 1940 figure (R. 1444-1445). Without analysis, this looks like strong proof of the *Patton* v. *Mississippi* type. However, it is highly deceptive, for it fails to consider the question of the eligibility of Filipinos. To use an extreme example, suppose that there had not been a single Filipino in Maui County prior to 1939 (and a fortiori no eligible Filipino). Under such circumstances, a statement by a witness that there had not been a Filipino on the grand jury during the period from 1919 to 1947 would form the basis of a most erroneous inference (i.e., exclusion for nearly 30 years). Again, one might reason that if there was a large group of Filipinos in Maui County for nearly 30 years, there must have been some eligible Filipinos each year during that period, and that if there was no Filipino on the grand jury during that period, discrimination must have existed. However, eligibility requires, among other things, citizenship and the ability to read, write and speak English with understanding. That such eligibility cannot be

so assumed and that mere population figures are as misleading as none at all, now will be shown.

So far as eligibility is concerned, Filipinos must be distinguished from Negroes; since the Civil War almost all adult male Negroes have been citizens, whereas very few adult male Filipinos have been citizens. Plaintiffs' Exhibit No. 22 is most revealing; this is a tabulation of the Filipino voters registered in Maui County for the election years from 1934 to 1946, and shows 103 male voters in 1946, 63 in 1944 and only 9 in 1934 (R. 1450). This very low number of male voters is due to the fact that until 1946 Filipinos who had not been engaged in the military service of the United States could not become naturalized citizens (8 U.S.C., Sections 703, 724). It should be observed that every Filipino whose grand jury questionnaire was put in evidence (R. 1498-1515) was of the second generation in the Territory, indicating that they were citizens by virtue of birth; their ages indicate that they became eligible only within the past few years. That the native born are just beginning to come of age is further confirmed by Plaintiffs' Exhibit 27, a census of Filipinos and others employed by sugar companies on Maui on June 30, 1947 (R. 1572). This shows 1339 citizens out of 3771 Filipinos, but, of the 1339 citizens, 1153 are children, 80 are women, and only 106 of the total number of Filipino citizens are male adults. This is characteristic of a very recent immigrant group.

It thus appears that with respect to the period from 1919 (at which time Mr. Crockett's testimony begins) to 1947 (the year of the grand jury in question) plaintiffs did not introduce any evidence showing the number of adult male Filipinos who were citizens, other than the extremely small showing made from recent lists of registered voters, and it further appears that, because of the surrounding circumstances, citizenship over a period of years cannot be assumed. For the same reason, namely that this is a recent

immigrant group, ability to speak, read and write English understandingly, which is required for eligibility, cannot be assumed.[140] In addition plaintiffs did not offer an iota of evidence as to whether any Filipino had served on a petit jury in Maui County. So, when plaintiffs' evidence on continual exclusion of Filipinos is set in its proper background, its extreme weakness becomes apparent. Compared with the proof in cases such as *Norris* v. *Alabama* and *Patton* v. *Mississippi* (supra), it falls short of even a prima facie case.

This is not surprising, as the idea of making the exclusion of Filipinos a main basis of attack on the grand jury is definitely an afterthought on the part of the plaintiffs. In the cases heard before Judge Cristy the racial discrimination issue was caucasian versus non-caucasian, and the question of Filipino exclusion was merely incidental to the alleged selection mainly of caucasians, as appears from the challenges (Exhibit E, III, 4; R. 73-75), the then defendants' opening statement (R. 570), the emphasis of their exhibits (R. 1425, 1535, 1537) and their failure to produce proof such as citizenship and literacy statistics. In fact, Filipino exclusion was not mentioned in the examination of Judge Wirtz but was first mentioned on examination of the witness Pombo (R. 843). In No. 12301, Filipino exclusion was pleaded (No. 12301, R. 18), but plaintiffs made little effort to bolster their weak case. The witness Crockett was asked a few questions concerning it (R. 1559) and, as mentioned before, in their summary counsel for plaintiffs used an unadmitted chart concerning the estimated number of Filipinos in Maui County in 1947, actually based on 1940 figures.

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[140] For example, plaintiffs selected 12 questionnaires of Filipinos to put in evidence (R. 1498-1515). One of these, Narcisso Sipe, was a witness in the court below, and plaintiffs' counsel suggested an interpreter for him (R. 1334). In this connection note that on his questionnaire Sipe stated that he had reached the 7th grade in school (R. 1500).

The alleged "weighting" of the grand jury list in favor of "businessmen." Another denial of due process alleged by plaintiffs is that the jury commissioners intentionally selected the grand jury list mainly from the employer group. The lower court concluded that there was a deliberate substantial exclusion of wage earners and a deliberate substantial weighting of the grand jury list in favor of "businessmen" (the employer-entrepreneur group which includes the haole group in Maui County, according to the court) (R. 509). Stripped of its gloss of verbiage this means that in the opinion of the lower court there were on the grand jury list too few laborers and too many businessmen or haoles (the lower court gives the term "haole" both racial and occupational and social connotations) [141] with relation to the number of laborers and businessmen in Maui County. This is the theory of proportional representation which has never been approved (Infra, pp. 157-158). We first will consider the groups which the court below thought were disproportionately represented in this case.

As appears from the opinion (R. 499-501), the lower court arbitrarily divided Maui County into two rigid, mutually exclusive and opposing groups.[142] One group was designated the "employer-entrepreneur" group (R. 499,

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[141] While the word "haole" was given variant meanings by the Court, the use of the word adds nothing to the findings. If the word "haole" was used to describe part of the caucasian race in contra-distinction to another part of the caucasian race (e.g., Portuguese, see R. 1379) it is irrelevant, for the Court found no discrimination against Portuguese and plaintiffs' own chart prepared for argument (R. 1943) shows six Portuguese on the grand jury list, more than their population ratio. If the word "haole" was used to describe persons of economic and social attainment, it adds nothing to the term "employer-entrepreneur" used by the Court, hence is equally irrelevant.

[142] The basic error in this breakdown (or any other breakdown of this type) is the underlying assumption that a community may be stratified, according to occupation, into groups wherein each person in the group will possess the same viewpoint and mental attitude toward life as all other persons in the group, regardless of race, personal background, religion or education.

500). From the 84% figure used by the court, this group must have been made up of the following classes (according to plaintiffs' definition of classes): professional and semi-professional workers; farmers and farm managers; proprietors, managers and officials, except farm; clerical, sales and kindred workers; and craftsmen, foremen and kindred workers (R. 1538). This arbitrary classification places in the employer-entrepreneur group such persons as a navy freight clerk (R. 1432), a U. S. engineers foreman (R. 1434), a territorial forester (R. 1434), and research workers (R. 1434, 1435). ILWU members Ito (R. 729), Saka (R. 731) and Muroki (R. 1037) must have been placed in the court's employer-entrepreneur group, inasmuch as they are not among the persons designated by plaintiffs as daily wage earners (R. 1349) and not among the persons whose group occupation was not reported (R. 1538). Any grouping which classes union men in the employer-entrepreneur group is obviously artificial. Moreover, the entrepreneur group was not coincidental with the haole group, the court simply having assumed such against its own findings.

The other group was designated the "laboring men" (R. 501). As above noted this group did not include three union men, but it did include three other union men.[143] Altogether, it included six laboring men on the grand jury list, Messrs. Alu, Cornwall, Correia, Rezents, Iziku and Ayers (R. 1439). This list of six conforms with the court's figures (R. 501).

The court then compared the percentage of laborers on the grand jury and the percentage of laborers (male) in Maui County (R. 501). This is a highly inaccurate comparison, because it compares persons of known eligibility with persons of unknown eligibility. That is, it fails

[143] These were Rezents (R. 734), Correia (R. 736), and Alu (R. 1036), all members of the ILWU.

to consider the percentage of male laborers in Maui County who were eligible for jury service. For example, see plaintiffs' Exhibit No. 27 (R. 1572), which shows that, of the 2072 male Filipinos in that particular census, 1966 were not citizens.

In order to follow this new and nebulous rule which the lower court announced, the jury commissioners must predict the cases which will come before the grand jury, for obviously the groups here used were custom tailored to fit the present cases. Such an over-simplified artificial grouping, based on only one common characteristic, i.e., occupation, would not serve in other cases (for example a politician or a religionist might be the defendant). Moreover, the jury commissioners must be statisticians to work this plan of occupational proportionate representation in with their own plan of geographical representation (i.e., proportional representation of the different precincts). The plain result of the lower court's rule is to drive the jury commissioners into picking the list by lot. But, picking the list by lot is not the law. A statute providing for a right of *selection* is not unconstitutional (see *Smith* v. *Texas,* supra, 311 U.S., at page 130; *Akins* v. *Texas,* supra, 325 U.S., at page 403; *Zimmerman* v. *Maryland,* 336 U.S. 901; in any event the validity of the territorial statutes was not attacked). Selection represents an exercise of judgment based on the opinions of the jury commisioners as to qualifications.

All of the above difficulties have been anticipated and obviated by the rule that proportional representation is not required (*United States* v. *Local 36 of International Fishermen,* 70 F. Supp. 782, D.C.S.D. Cal. 1947, citing and following *Wong Yim* v. *United States,* 118 F. 2d 667, C.A. 9 (which held that proportionate representation of races is not required)). There is no case where proportionate representation has been required by either Supreme Court

policy or the Fifth Amendment or the Fourteenth Amendment. Even though the court below thought that *intentional* economic or occupational weighting played a part in this case (R. 505), what the court does not explain is how a jury commissioner can be convicted of doing the wrong thing unless there first is set up a norm or standard of what he should have done. But this in turn leads right back to the proposition that occupational proportionate representation is not required, that is, a jury commissioner is not required to exercise his power of selection with a view to securing proportional representation.

In Supreme Court cases, where, incidentally, the decisions are not based upon the Fifth Amendment but upon the power of the Supreme Court to supervise the administration of justice in the inferior federal courts, no allegation of intentional economic or occupational weighting has been involved. The *Thiel* case held that intentional exclusion (undisputed) of daily wage earners was improper, and the *Ballard* case held that intentional exclusion (conceded) of women was improper under the particular facts. Both cases indicated that even on the basis of policy the Supreme Court would not set up a requirement of group proportional representation. The vice was group *exclusion*. This is even clearer in the light of *U.S.* v. *Gottfried,* 165 F. 2d 360 (C.A. 2d, 1948), cert. denied 333 U.S. 860, rehearing denied 333 U.S. 883, where Judge Learned Hand held to be valid the method of drawing jurors for the District Court of the United States for the Southern District of New York. In that district, all jurors were drawn from the three predominantly urban counties, and no jurors were drawn from the eight predominantly rural counties. Of necessity, such juries are weighted in favor of urbans and against rurals. The district court had so used its power to divide the district geographically that this result had been brought about, and the Constitution did not forbid it.

Plaintiffs neither alleged nor attempted to prove intentional *exclusion,* as distinguished from weighting, based upon a person's occupation or economic status. If they had, they would have been blocked by the fact that there were six laborers out of 50 persons on the grand jury list (R. 1432-1436).

The court below twisted Commissioner Pombo's explanation of the number of haoles on the grand jury and his opinion as to the qualifications of businessmen into an admission that he deliberately refused to pick laborers because they were laborers. The way in which Commissioner Pombo's testimony was used illustrates the vice of the supposition that intentional occupational weighting is a matter for judicial inquiry going to the constitutionality of the grand jury list. Mr. Pombo, in his testimony before Judge Cristy (R. 830-831, 855) cited by the court (R. 504-505), stated that he "wouldn't know whether there was a greater percentage of haoles on the grand jury list than in the population," that he thought there were "very few haoles—17" (the court makes it 21, R. 501), that haoles, specifically referring to "the Baldwins," "want to run politics, just as well give them something to do in courts. They can't run it in here because the population getting too independent." This obviously sarcastic reference by an oldtime Democrat (R. 805) to the ascendency of his party over that of his leading Republican opponents, "the Baldwins," is distorted by the lower court into a significant admission (R. 505). So from Mr. Pombo's testimony that a man in business "has got a better head on him" (R. 855), the court concludes there was a violation of the *Thiel* case (R. 509) which actually related to the intentional and systematic *exclusion* of all daily wage earners because they were such. Mr. Pombo did not testify that laborers were excluded and the court found that there were six on the list.

Obviously, no candid jury commissioner who did not live

in a vacuum could fail to have an opinion as to whether businessmen have better heads on them. This leads back to the proposition that the rule laid down by the lower court really is a rule against jury commissioners having any opinions, it is a rule that requires them to pick the jury list by lot, and that is not the law. Moreover, the lower court conveniently overlooked: (1) Pombo's statements that he had been a champion of the laboring man for years (R. 804) and that he picked a man on his merits (R. 848); (2) Pombo's testimony that he was not a "haole" because he was a Portuguese (R. 809, see R. 1379); and (3) Judge Wirtz's statement that the jury commissioners were not concerned with the occupation of the prospective grand jurors (R. 769). But these matters cannot be overlooked. It is particularly amazing that the court built its findings of deliberate overweighting in favor of the "employer-entrepreneur-haole" group on the testimony of Mr. Pombo, who was not a member of that group on any score, i.e., he was a delinquent tax collector working for the Territory, he was an oldtime Democrat and champion of the working man, and he was not a "haole."

The alleged exclusion of women. A third alleged denial of due process is that women were intentionally excluded from the 1947 Maui County Grand Jury. It is a fact that no woman was even considered for such jury service, for the reason that Section 83 of the Organic Act (48 U.S.C., Section 635) provides that jurors shall be males. Hence, on this issue, plaintiffs confined themselves to a legal argument to the effect that the Nineteenth Amendment meant that women had to be considered for jury duty. The lower court did not take this argument seriously and held correctly that the contention was without merit, on the basis that the Nineteenth Amendment guaranteed to female citizens only the right to vote, and did not work a change in Section 83 of the Organic Act (R. 511, note 105).

XII.

THE COURT ERRED IN DENYING THE MOTION TO DISMISS THE DEFENDANTS BEVINS AND CROCKETT AFTER THEY HAD CEASED TO HOLD OFFICE.

After the opinion had been given in these cases but before entry of the decree the defendants E. R. Bevins and Wendell F. Crockett ceased to hold the positions of county attorney and deputy county attorney respectively. The attorney general filed a suggestion of the abatement of the action as to them and moved for their dismissal (R. 523-525; No. 12301, R. 87). They also sought their dismissal (R. 538-539; No. 12301, R. 88-89). The grounds presented were that the actions had become moot as to them, and that they had no longer any power or authority to act.

The court dismissed these defendants in their respective capacities as county attorney for the County of Maui and deputy county attorney for the County of Maui but retained them in the cases individually (R. 547; No. 12301, R. 93).

Under *Ex parte Young, supra,* 209 U.S. 123, 159, and *Ex parte La Prade, supra,* 289 U.S. 444, 455, from the inception of these suits they were, in legal theory, actions against individuals and not against officers in their official capacity. The office held may be descriptive of the powers claimed by a defendant but the suit cannot be maintained against him officially; instead it can only be maintained against him on the theory that he does not possess the asserted powers and is suable as an individual. The whole subject has been recently reviewed by the Supreme Court in *Larson* v. *Domestic & Foreign Commerce Corp.,* 337 U.S. 682.

When the defendants Bevins and Crockett ceased to hold office they also ceased to claim any powers (R. 538-539; No. 12301, R. 88-89). Hence the action was moot as to them. *Chandler* v. *Dix,* 194 U.S. 590; *Pullman Co.* v. *Knott,*

243 U.S. 447; *Shaffer* v. *Howard,* 249 U.S. 200. This is in keeping with the rule that where the relief asked can no longer be granted because of a change in the circumstances the case has become moot. *Michael* v. *Cockerell,* 161 F. 2d 163, 165 (C.A. 4th 1947).

In the light of the foregoing principles, the action of the court in dismissing Messers. Bevins and Crockett in their respective capacities as county attorney and deputy county attorney but not individually was neither fish nor fowl. The court dismissed altogether other defendants who had ceased to hold office or as to whom the court found no basis for present injunctive relief (R. 516, 547; No. 12301, R. 94), and the same action should have been taken as to the defendants Bevins and Crockett.

CONCLUSION

Appellants respectfully submit that the opinion below has the status of one rendered by a single judge; that these cases squarely involve the issue of federal court intervention in pending state and territorial criminal cases, for unlawful conduct has occurred and the question presented is whether plaintiffs can be held accountable for it in the pending criminal cases; that these cases are not labor relations cases, for the union and class representatives stated no cause of action and the maxim "he who comes into equity must come with clean hands" is applicable; that in any event at the present time nothing is involved but four pending criminal prosecutions, for the statutes have been amended and the grand jury has gone out of office; that the court erred in holding that a federal equity court has jurisdiction to intervene in pending state and territorial criminal cases if it sees fit; that the court further erred in holding that discretion to so intervene was conferred upon it by the Civil Rights Act, for that Act made no exception to the statutory prohibition against injunctions staying pend-

ing proceedings; that a United States district court possesses only two powers for intervening in pending state and territorial criminal cases, one being the removal of the cause for the protection of civil rights and the other being habeas corpus; that even under these powers the federal court will not conduct a pretrial of the good faith of the prosecution before trial of the criminal cases, but will remit the accused to the state courts to proceed to final judgment; that the same is true no matter what allegations are made of local prejudice, bias of judges and discriminatory treatment; that the court further erred in holding that the good faith of the prosecution turned upon the motive of the prosecutor and then, by reviewing a number of unpleaded circumstances unrelated to any defense to the prosecutions and largely outside the record, and by characterizing the community as anti-labor and the measures taken by the prosecutor against unlawful conduct as too severe, inferring (without any showing or finding of a connection between the prosecutor and the employers or anyone else) a motive to "beat labor"; that good faith of the prosecution, subjected to a review of that nature, is simply a means for usurpation of supervisory power over the executive and legislative branches of the territorial governments, just as the court usurped appellate jurisdiction over the territorial courts; that the court below erred in using a bill in equity to review the Supreme Court of Hawaii's opinion in *Territory* v. *Kaholokula,* 37 Haw. 625; that even if the parties to that case had not been before it, the trial court lacked power to place its own construction on a territorial criminal statute, differing from the authoritative construction of the Supreme Court of Hawaii, and lacked power to strike down the statute on the basis of its own erroneous construction of the statute; that the Unlawful Assembly and Riot Act, which is a codification of common law offenses confined to breach of the peace or clear and present danger

thereof, is constitutional and valid; that the conspiracy statute is valid at least in making punishable a conspiracy to commit an offense and there was no occasion to strike down the statute in toto; that a grand jury challenge never before has been and cannot be initiated collaterally by an action in equity, and the defendants in Criminal No. 2365 should have attacked the grand jury, if such was their purpose, by plea to the second indictment; that the defendants in the other criminal cases deliberately mooted their challenges to the grand jury and prevented proper appellate review of the record in the Maui court; and that the court further erred in finding deliberate exclusion from the grand jury list of Filipinos (as distinguished from other non-caucasians of whom there were 23, including 7 Japanese and 4 Chinese) and in finding deliberate overweighting of the grand jury list in favor of an artificial employer-entrepreneur-haole group (in which the court included persons of many races and trades, even union men, in fact everyone except day laborers of whom there were 6).

The decrees below should be reversed.

DATED at Honolulu, T. H., this 27th day of January, 1950.

Respectfully submitted,

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individually and as Attorney General of the Territory of Hawaii, Appellant in Nos. 12300 and 12301, and Jean Lane, individually and as Chief of Police of the County of Maui, Appellant in No. 12300.

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APPENDIX

APPENDIX I.

NOTES CITED TO THE TEXT OF THE BRIEF

Note 15, cited pp. 45, 136, 138.

Section 24 (14) of the old judicial code, 28 U.S.C. 41 (14), conferred jurisdiction:

> "Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

Section 1343 of the new judicial code has revised this provision to read as follows:

> "The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> "(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Title 8;
>
> "(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 47 of Title 8 which he had knowledge were about to occur and power to prevent;
>
> "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

Only paragraph (3) of this section has any relevancy, section 47 of Title 8 being neither cited in the pleadings or in any way involved.

Note 19, cited pp. 47, 86, 92, 138.

Since the Act of March 2, 1793, 1 Stat. 334, c. 22, section 5, the statutes of the United States have prohibited the granting of a writ of injunction by any court of the United States to stay proceedings in any court of a state. This statute became Revised Statutes, section 720, from which was derived section 265 of the old judicial code, 28 U.S.C. section 379, reading as follows:

> "§ *379. (Judicial Code, section 265.) Same; stay in State courts.* The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

This provision appears as section 2283 of the new judicial code, reading as follows:

> "§ *2283. Stay of State court proceedings*
>
> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

In *Alesna* v. *Rice,* 172 F. 2d 176, 179, this Court, while not passing on the precise question of the applicability of this statute in Hawaii, nevertheless stated that "if a constitutional district court is precluded by statute or rule of law from interfering in state court proceedings similar to the proceedings in which this *Rice* order was issued, the United States District Court for the District of Hawaii is precluded from interfering with the territorial court proceedings," and that "the Organic Act places the courts of

the Territory of Hawaii in a relatively similar position to the federal judicial system as are the state courts."

In the *Alesna* case this Court cited in support of the foregoing, section 86 (c), 48 U.S.C. 642, and section 86 (d), 48 U.S.C. 645, Hawaiian Organic Act. By Public Law 773, 80th Cong., 2d Sess., which enacted the new Title 28 of the United States Code as section 1 of that Act, an amendment of section 86 of the Hawaiian Organic Act was made by section 8 of that Act. The amendment continues in effect the former section 86 (d) with slightly different wording, as follows:

> "Sec. 86. The laws of the United States relating to removal of causes, appeals and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the courts of United States and the courts of the Territory of Hawaii."

The provisions of former section 86 (c) that the United States district court for the district of Hawaii "shall have the jurisdiction of district courts of the United States," were deleted upon the enactment of the new Title 28 because the United States district court for the district of Hawaii was included in the new Title 28 as a district court of the United States. See *Stainback* v. *Mo Hock Ke Lok Po,* 336 U.S. 368, 376.

Section 86 of the Hawaiian Organic Act is an example of an adoptive statute, i.e., a statute which adopts and incorporates by reference the statutes governing a certain subject matter, thereby making such other statutes applicable to the situation covered by the adoptive statute. See *Balzac* v. *Porto Rico,* 258 U.S. 298; 2 Sutherland on Statutory Construction, 3d ed. sec. 5207. Adoptive statutes are classified as of general or specific reference, the former referring

to the law of a subject generally. The adoptive provisions of section 86 are of this general reference type.

The principle that the United States district court for the district of Hawaii occupies the same relationship to the territorial courts as exists between the courts of the United States and the state courts in the various states was firmly established in a series of cases holding that the federal rule against interference by habeas corpus with the proceedings of state courts is equally applicable in the Territory of Hawaii. *In re Marshall,* 1 U.S.D.C. Haw. 34 (1900); *In re Atcherley,* 3 U.S.D.C. Haw. 404, 421 (1909); *Soga* v. *Jarrett,* 3 U.S.D.C. Haw. 502, 506 (1910); *In re Curran,* 4 U.S.D.C. Haw. 730, 738 (1916). Another case relying on the same principle is *United States* v. *Bower,* 4 U.S.D.C. Haw. 466 (1914). The judicial pronouncements as to the relationship between the territorial system of courts and the federal court in Hawaii are confirmed by the legislative history of the Hawaiian Organic Act. Hawaiian Commission Message, Sen. Doc. No. 16, 55th Cong., 3d Sess., pp. 162-164; H. R. Rep. No. 305 (reprinted in part, R. 1856-1863) being report on H. R. 2972, 56th Cong., 1st Sess., which bill was later incorporated by the House into Sen. 222, the Hawaiian Organic Act (see H. R. Rep. No. 549, 56th Cong., 1st Sess.); 33 Cong. Rec. 1871, 1929, 1932-1934, 2025, 2123-2124, 2133, 2189, 2191-2194, 2388-2389, 2397, 2398-2400, 2441, 3771, 3801, 3859, 4358, 4649, 4733.

Note 22a, cited p. 52.

The unlawful assembly and riot act was enacted as chapter 39 of the Penal Code of 1850, June 21, 1850. This Penal Code was drafted by Chief Justice William Lee, who had come to Hawaii from New York in 1846, after studying law at Harvard Law School under such well-known jurists as Judge Story and Professor Greenleaf (R. 1835, 1838). There is no foundation for the surmise made by the lower

court (R. 443) that the Act may have been in existence prior to that time. Judge Lee stated in his preface that in drafting the Penal Code he had in the main adopted the principles of the English common law.

When Hawaii became a territory section 6 of the Hawaiian Organic Act (Act of April 30, 1900, 31 Stat. 141, 48 U.S.C. 496) continued in effect all the laws not inconsistent with the Constitution or laws of the United States, except certain laws repealed by section 7. Said sections 6 and 7 were based on the report of the Hawaiian Commission, Sen. Doc. No. 16, 55th Cong., 3d Sess. (R. 1846-1856), which shows that the commission, through its committee on judiciary, thoroughly reviewed the penal laws as well as the other laws of Hawaii, and recommended which should be continued in effect and which should be repealed. The Hawaiian commission report transmitted in full to the Congress all the laws not recommended to be repealed. The unlawful assembly and riot act and the conspiracy law were transmitted exactly in the form in which they stood at the time of these cases, except for the later changes in penalty below noted, and some changes later required because of changes in the officers mentioned in the statutes (R. 1848-1856).

That the work of the committee on judiciary of the Hawaiian commission was approved by Congress is evident upon comparison of the Hawaiian Organic Act as enacted, with the bill transmitted by the commission. See also H.R. Rep. No. 305, 56th Cong., 1st Sess., printed in part at R. 1856-1863. On the basis of the commission's report, the Hawaiian Organic Act repealed certain penal laws, such as the law relating to seditious offenses, but continued in effect without change the unlawful assembly and riot statute and the conspiracy law, as well as others. The punishment for the offense of unlawful assembly and riot when having for its object the destruction or injury of

property has remained at the maximum of two years or $500 throughout the history of the law. In other cases the maximum punishment originally was five years, or $1,000. The five years was increased to twenty years maximum by Act 4 of the Session Laws of 1929.

The court below remarked that the unlawful assembly and riot statute, appearing in the Penal Code of 1850, predated the Hawaiian constitution of 1852. This is immaterial, since the influences which secured the excellent "Declaration of Rights" in the 1852 constitution already were at work and had been for some time. In fact, the commission which drafted the 1852 constitution was appointed pursuant to action of the legislature of 1850. Chief Justice Lee was one of the commissioners so appointed to draft the 1852 constitution. (See Alexander's Brief History of the Hawaiian People, p. 272.)

A declaration of rights had been issued by Kamehameha III prior to the constitution of 1840, but it was in general terms. The constitution of 1852 was specific, e.g.:

> "ART. 3. All men may freely speak, write and publish their sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.
>
> "ART. 4. All men shall have the right, in an orderly and peaceable manner to assemble, without arms, to consult upon the common good; give instructions to their Representatives; and to petition the King or the Legislature for a redress of grievances."

Note 22b, cited pp. 58, 61.

The difference between the English and American law on the subject of assemblies is set forth in a note in 42 Harv. L.R. 265, 269, as follows:

> "* * * In England, the courts have gone extremely far in considering unlawful all meetings at which sedi-

tious speeches have been made [Rex v. Hunt, 1 How. St. Tr. (N.S.) 171 (1820); Regina v. Fursey, 6 C. & P. 81 (1833); Regina v. Fussell, 6 How. St. Tr. (N.S.) 723 (1848); Regina v. Burns, 16 Cox C. C. 355 (1886); see Dicey, Law of the Constitution 502; 4 Stephen, Commentaries (18th ed. 1925) 193.], but in this country the basis of the crime properly remains its tendency to produce an immediate breach of the peace [Slater v. Wood, 9 Bosw. (N.Y. 1861) 15; People v. Most, 128 N.Y. 108, 27 N.E. 970 (1891); State v. Hughes, 72 N.C. 25 (1875); Ex parte Jacobson, 55 Tex. Cr. 237, 115 S.W. 1193 (1909); Shields v. State, 187 Wis. 448, 204 N.W. 486 (1925); *cf.* People v. Kerrick, 261 Pac. 756 (Okla. 1927); Bennett, *Public Meetings and Order* (1888) 4 L.Q. Rev. 257.]. * * *"

The distinction made in this note between the English and American practice, i.e., that in this country to become unlawful an assembly must have proceeded to a point where it tends to produce an immediate breach of the peace, is borne out by such cases as *Chaplinsky* v. *New Hampshire, Terminiello* v. *Chicago, Hague* v. *CIO,* and *Sellers* v. *Johnson,* cited in the text of the brief, p. 63. Therein lies the difference made in the English law by the First Amendment.

The exact point of difference lies in the requirement made in this country that what occurs must strike terror or tend to strike terror into others, or as the common law phrase had it, be "in terrorem populi," otherwise there is no offense. This element of "in terrorem populi" was not always required in England for the offense of unlawful assembly, though it was required for riot. (*Rex* v. *Cox,* 4 Car. & P. 538, 172 Eng. Rep. 815; see Blackstone, Book IV, p. 146, pointing out that in a case of unlawful assembly, the meeting need not have proceeded to the point of overt acts if it had an unlawful purpose; 66 C.J. 39, sec. 7.) The statute of George I could be invoked without the allegation

of "in terrorem populi," *Rex* v. *James,* 5 Car. & P. 153. This opened the door to abuses, since a meeting could be found to have an unlawful purpose because it was held for the airing of grievances against the crown. *Rex* v. *Fursey,* 6 Car. & P. 80. Of course, the dissolving of assemblies that had met for the consideration of grievances against the crown was the very abuse which the bill of rights was intended to meet. In the drafting of the bill of rights, the emphasis was on this right of petition, the right of peaceable assembly being inserted in the bill of rights as a necessary adjunct thereof. (See Declaration and Resolves of the First Continental Congress, October 14, 1774; Sessions of First Congress, House of Representatives, pages 434, 732-733.) The reference to the English statute made in the footnote in the Bridges case, 314 U.S. 252, 265, footnote 9, to which the Court refers (R. 458-459), therefore is understandable.

In the Hawaiian statute "in terrorem populi" is a required element of any and every offense. That this element of the offense is demonstrative of a clear and present danger of breach of the peace has been shown in the brief, p. 63. The Hawaiian statute therefore reflects the difference made in the English law by the American law, as was to be expected since Chief Justice Lee of Hawaii, who drafted the Penal Code of 1850, had studied at Harvard under the great Judge Story.

Note 27, cited p. 57.

This Court's appellate jurisdiction over the Supreme Court of Hawaii is set forth in section 1293 of the new judicial code (formerly 28 U.S.C. 225 (a), par. Fourth), as follows:

> "§ *1293. Final decisions of Puerto Rico and Hawaii Supreme Courts*
>
> "The courts of appeals for the First and Ninth Circuits shall have jurisdiction of appeals from all final

decisions of the supreme courts of Puerto Rico and Hawaii, respectively in all cases involving the Constitution, laws or treaties of the United States or any authority exercised thereunder, in all habeas corpus proceedings, and in all other civil cases where the value in controversy exceeds $5,000, exclusive of interest and costs."

One type of appeal from the Supreme Court of Hawaii is an appeal in a civil case founded on jurisdictional amount. Such an appeal, differing from an appeal to a federal court from a state court, does confer complete power to reverse any ruling of the territorial court on law or fact, but as actually exercised this power occasions a reversal in matters of local law only in cases of clear or manifest error. *Waialua Co.* v. *Christian,* 305 U.S. 91, 109; *Castle* v. *Castle,* 281 F. 609 (C.A. 9th); *Campose* v. *Central Cambalache,* 157 F. 2d 43 (C.A. 1st). The test of clear or manifest error as laid down for courts of appeal having appellate jurisdiction over local issues in territories, and frequently recognized by this Court, is stated in *Bonet* v. *Texas Co.,* 308 U.S. 463, 471, as follows:

"We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

In the type of appeal which applies to criminal cases, jurisdiction is determined by the issues, i.e., "in all cases involving the Constitution, laws or treaties of the United States or any authority exercised thereunder." Hence this type of appeal is similar to an appeal from a state court to a federal court (Supreme Court). In this type of appeal this Court confines itself to the constitutional issues. *Kimbrel* v. *Territory,* 41 F. 2d 740 (C.A. 9th 1930); *Young* v. *Territory,* 160 F. 2d 289 (C.A. 9th 1947); *Fukunaga* v. *Territory,* 33 F. 2d 396 (C.A. 9th 1929), cert. denied 280 U.S. 593.

Note 41, cited pp. 70, 99, 118.

Under the indeterminate sentence law imprisonment could not be imposed without being subject to parole upon expiration of a minimum term, to be fixed by the board of paroles and pardons after a full investigation, and approved by the court, who could modify it (Section 10842, Revised Laws of Hawaii 1945, as amended by Act 199 (Series D-164) Session Laws of Hawaii 1947. The amendment made no substantial change). Upon being paroled the parolee could obtain his final discharge by satisfying the board of paroles and pardons, subject to the approval of the governor, that he would "remain at liberty without violating the law and that his final release is not incompatible with the welfare of society" (Section 3963, Revised Laws of Hawaii 1945). While the parole would last for the maximum term of imprisonment if such final discharge was not sooner obtained, there were many possible dispositions of these cases (in the event of a verdict of guilty) not involving any imprisonment.

Thus the court might suspend the imposition of sentence, or might impose it and suspend its execution (Section 10843, Revised Laws of Hawaii 1945). In the event of such suspension the resultant period of probation could

not exceed five years, and of course could be fixed at any less period by the court.

Of course no imprisonment at all might be involved, as the court might impose a fine and nothing more.

Upon writ of error to the Supreme Court of Hawaii the sentence, if deemed excessive by the court, might be reduced by that court (Section 9564, Revised Laws of Hawaii 1945). In fact, the Supreme Court of Hawaii has used such power to nullify altogether a sentence of imprisonment and impose a fine instead, where it deemed the imposition of imprisonment to be an abuse of discretion. (*Territory* v. *Kunimoto,* 37 Haw. 591; *Territory* v. *Chong,* 36 Haw. 537.)

Note 42, cited p. 71.

The conspiracy statute, like the unlawful assembly and riot act, was enacted by the Penal Code of 1850, and like the unlawful assembly and riot act it was transmitted to the Congress by the report of the Hawaiian commission and was continued in effect without change by section 6 of the Hawaiian Organic Act (See note 22a, *supra*). At the time of these cases the statute stood in the same form in which it was transmitted to and continued in effect by Congress, except for a change in the maximum fines enacted by Act 99 of the Session Laws of 1935.

Note 61, cited p. 84.

That there is an important distinction between pending state criminal prosecutions and those which are merely threatened to be brought if a certain course of conduct is continued, and that it is mandatory upon a United States district court to abstain from issuing injunctive relief against pending state criminal prosecutions, is held in *Cline* v. *Frink Dairy Co.,* 274 U.S. 445, 452-453. This was a case in which a district attorney had filed an information in the state criminal court under a state anti-trust act alleged to

be unconstitutional, and further prosecutions were threatened. The three-judge district court held the statute unconstitutional and issued an injunction both against the pending criminal prosecution and also against the threatened further prosecutions. One judge dissented from the decree so far as it was directed against the actual proceedings pending in the criminal court. The Supreme Court held that a clear showing of irreparable injury entitling the plaintiff to injunctive relief had been made and that the statute was unconstitutional. But as to the pending criminal proceedings the decree was modified "so far as it purports to enjoin the defendant from proceeding further in prosecuting the information under that Act against the plaintiffs now pending in the state criminal court."

Considering this feature of the case on pages 452-453 of 274 U.S., the Supreme Court held that "the general rule is that a court of equity is without jurisdiction to restrain criminal proceedings to try the same right that is in issue before it; * * *" (pages 451-452), and then held that the exception to this rule for the enjoining of such prosecutions under alleged unconstitutional enactments does not apply to pending criminal proceedings. The court so held on the authority of *Ex parte Young,* 209 U.S. 123, 162:

> "* * * But the Federal court cannot, of course, interfere in a case where the proceedings were already pending in a state court. *Taylor* v. *Taintor,* 16 Wall. 366, 370; *Harkrader* v. *Wadley,* 172 U.S. 148."

After so quoting from *Ex parte Young,* the court concluded in the *Cline* case:

> "We, therefore, agree with the view of the dissenting Judge that the injunction is too broad, in so far as it restrains proceedings actually pending, and that it must be accordingly modified." (P. 453.)

The above distinction between pending and merely threatened prosecutions was made by this Court in *Babcock*

v. *Noh,* 99 F. 2d 738 (C.A. 9th 1938), which is cited in *Alesna* v. *Rice,* 172 F. 2d 176 (C.A. 9th 1949), cert. denied October 10, 1949. In the *Alesna* case this Court did not go into the distinction between pending and threatened criminal prosecutions, since it was satisfied that the court below should not have entertained the application for injunctive relief.

The district courts generally have followed the distinction between pending and merely threatened criminal proceedings, and have refused injunctions against pending criminal proceedings. *Priceman* v. *Dewey,* 81 F. Supp. 557, 559 (D.C.E.D. N.Y. 1949); *Society of Good Neighbors* v. *Groat,* 77 F. Supp. 695 (D.C.E.D. Mich. 1948). In *Jewel Tea Co.* v. *Lee's Summit, Mo.,* 198 Fed. 532 (D.C.W.D. Mo. 1912), affirmed sub. nom. *City of Lee's Summit* v. *Jewel Tea Co.,* 217 Fed. 965 (C.A. 8th 1914), in disposing of a bill to restrain enforcement of a licensing ordinance found to be an interference with interstate commerce, the district court restricted its decree to future prosecutions under the ordinance and dissolved a temporary injunction improvidently issued against pending prosecutions; the court of appeals sustained the decree. In *Spence* v. *Cole,* 137 F. 2d 71 (C.A. 4th 1943), it appears that the district court did not enjoin prosecutions already pending for violations of the ordinance attacked as unconstitutional, but only restrained future prosecutions, as to which restraint of future prosecutions the court of appeals reversed on the authority of *Douglas* v. *Jeannette,* 319 U.S. 157.

The leading case showing that the rule against enjoining pending criminal prosecutions is jurisdictional is *In re Sawyer,* 124 U.S. 200 (1888). In that case the action of a federal court of equity in issuing an injunction against the removal from office of a city police judge occasioned a review of the jurisdiction of equity. In holding that the injunction was without jurisdiction and that violation of

it could not be punished, the Supreme Court so held upon analogy to the rules governing equity jurisdiction over criminal prosecutions. The court said:

> "The office and jurisdiction of a court of equity, unless enlarged by express statute, are limited to the protection of rights of property. It has no jurisdiction over the prosecution, the punishment or the pardon of crimes or misdemeanors, or over the appointment and removal of public officers. To assume such a jurisdiction, or to sustain a bill in equity to restrain or relieve against proceedings for the punishment of offenses, or for the removal of public officers, is to invade the domain of the courts of common law, or of the executive and administrative department of the government." (124 U.S. at p. 210.)

The next case is *Harkrader* v. *Wadley,* 172 U.S. 148 (1898). This involved a petition for a writ of habeas corpus to effectuate an injunction which the petitioner had obtained against further prosecution under a certain indictment. The petitioner had been committed to the custody of a sheriff and held to answer said indictment, notwithstanding the injunction. The grant of the writ of habeas corpus was reversed by the Supreme Court and the petitioner was directed to be restored to the custody of the sheriff. The court held that both under Revised Statutes 720 (the statute considered in part B of Point VI of the brief and in note 19, supra) and under the rule of *In re Sawyer, supra,* there was no authority to issue the injunction against proceedings under the indictment. It was urged that the jurisdiction of the federal court had first attached because prior to the institution of the state criminal proceedings the petitioner had been made a party to the federal equity suit, and the equity suit involved the same facts as those involved in the later criminal proceeding. The court held that this circumstance did not obviate application of the rule, which it stated as follows:

"* * * that a Circuit Court of the United States, sitting in equity in the administration of civil remedies, has no jurisdiction to stay by injunction proceedings pending in a state court in the name of a State to enforce the criminal laws of such State." (172 U.S. at p. 170.)

The *Harkrader* case did not involve the constitutionality of a state criminal statute. This was involved in *Ex parte Young, supra,* 209 U.S. 123, 149-166, where the power of a federal equity court to enjoin a state law enforcement officer from enforcing a criminal statute on the ground of its alleged unconstitutionality was considered. In upholding the jurisdiction of the federal equity court in such a case, the Supreme Court made it clear that "the federal court cannot, of course, interfere in a case where the proceedings were already pending in a state court" (209 U.S. at p. 162), which was quoted and followed in *Cline* v. *Frink Dairy Co., supra,* as above noted.

That the rule against invasion of state criminal proceedings by a federal equity court is jurisdictional further appears from *Broad-Grace Arcade Corp.* v. *Bright,* 284 U.S. 588, on appeal from the decision reported below, 48 F. 2d 348. The district court of three judges had declined to issue an interlocutory injunction in a case involving both the constitutionality of the Virginia Sunday law and the alleged denial of equal protection in the administration of the law. The plaintiff corporation's manager had been arrested and convicted under the law and the case was on appeal. Further arrests were threatened. In affirming by a memorandum opinion the denial of the interlocutory injunction, the Supreme Court said it did so "without prejudice to the power and duty of the district court, as specially constituted, to inquire and determine *whether the court has jurisdiction (Judicial Code, s. 37; U.S. Code, Title 28, s. 80)* [italics added] both in relation to the amount involved in

the controversy [citations omitted] and with respect to the right of the complainant to maintain this suit in equity [citations omitted]." The citation of U.S. Code, Title 28, section 80, squarely places the issue in the jurisdictional area, for this section provided:

> "§ *80. (Judicial Code, section 37.) Same; dismissal or remand.* If in any suit commenced in a district court, or removed from a State court to a district court of the United States, it shall appear to the satisfaction of the said district court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said district court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this chapter, the said district court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed, as justice may require, and shall make such order as to costs as shall be just."

In incorporating this section in the new Judicial Code, the revisers omitted as unnecessary the portion thereof relating to dismissal of an action not really and substantially involving a dispute or controversy within the jurisdiction of the district court, the reviser's note stating: "Any court would dismiss a case not within its jurisdiction when its attention is drawn to the fact, or even on its own motion" (Reviser's Notes to section 1559, Revised Title 28).

Another recent case showing that the lack of authority of a federal equity court to restrain pending criminal proceedings goes to the jurisdiction of the court is *Priceman* v. *Dewey,* supra, 81 F. Supp. 557, 559. The district judge refused to convene a three-judge court and dismissed the complaint on the ground of lack of jurisdiction to restrain the pending state court prosecution; if the allegations of the

complaint had shown jurisdiction then, as the district court recognized, a three-judge court would have had to be convened since unconstitutionality of the state law was alleged.

While a threatened future prosecution interfering with the continued enjoyment of rights may be enjoined, this power is sparingly used. As said in *Fenner* v. *Boykin,* 271 U.S. 240, in refusing an injunction against a threatened arrest and prosecution:

> "* * * Ordinarily, there should be no interference with such officers; primarily, they are charged with the duty of prosecuting offenders against the laws of the State and must decide when and how this is to be done. The accused should first set up and rely upon his defense in the state courts, even though this involves a challenge of the validity of some statute, unless it plainly appears that this course would not afford adequate protection. The Judicial Code provides ample opportunity for ultimate review here in respect of federal questions. *An intolerable condition would arise if, whenever about to be charged with violating a state law, one were permitted freely to contest its validity by an original proceeding in some federal court. Hygrade Provision Co.* v. *Sherman,* 266 U.S. 497, 500." (Pp. 243-244, italics added.)

Note 69, cited p. 90.

The provisions of the removal statute relating to the protection of civil rights are as follows:

28 U.S.C. Sec. 74

> "§ *74. (Judicial Code, section 31.) Same; causes against persons denied civil rights.* When any civil suit or criminal prosecution is commenced in any State court, for any cause whatsoever, against any person who is denied or can not enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within

the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespasses or wrongs made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial into the next district court to be held in the district where it is pending * * *."

Title 28 Revised Code, Sec. 1443.

"§*1443. Civil rights cases*

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

"(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

"(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

Note 85, cited pp. 99, 102-103, 123, 133.

Collective bargaining, association of employees in labor organizations, work stoppages, and picketing are not absolute rights. *Algoma Plywood & Veneer Co.* v. *Wisconsin Board,* 336 U.S. 301; *International Union UAW* v. *Wisconsin Board,* 336 U.S. 245; *Lincoln Labor Union* v. *Northwestern Iron & Metal Co.,* 335 U.S. 525; *A. F. of L.* v. *American Sash & Door Co.,* 335 U.S. 538; *Giboney* v. *Empire Storage & Ice Co.,* 336 U.S. 490.

Use of force and violence in a labor dispute may be quelled without consideration of the impact on labor relations and without conflict with the Labor Management Relations Act 1947. Thus in *International Union, UAW* v. *Wisconsin Board, supra,* 336 U.S. 245, the court said:

> "* * * While the Federal Board [National Labor Relations Board] is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal — even if the illegality were to consist of actual or threatened violence to persons or destruction of property. *Policing of such conduct is left wholly to the states.* In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and *no one questions the State's power to police coercion by those methods.*" (336 U.S. at p. 253, italics added.)

In *Sanford* v. *Hill,* 316 U.S. 647, the Supreme Court dismissed for want of a substantial federal question an appeal from a state court denial of habeas corpus. The petition for habeas corpus attacked a Texas statute which made it a felony to use force or violence to prevent another from engaging in a lawful occupation. The state court's judgment, *Ex parte Sanford,* 144 Tex. Cr. App. 430, 157 S.W. 2d 899, was based on *Ex parte Frye,* 143 Tex. Cr. App. 9, 156 S.W. 2d 531, 534, from which it appears that in quelling violence in a labor dispute a state not only is not required to consider the impact on labor relations but moreover may treat an assault which has as its object to prevent another from pursuing his occupation, as a more aggravated offense than an ordinary assault. This Texas statute is the same as the Arkansas statute, the second section of which was involved and upheld in *Cole* v. *Arkansas,* decided December 5, 1949, 338 U.S. 345, 94 L.Ed. Adv. Op. 139.

The Labor Management Relations Act 1947 itself makes it an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the right to refrain from striking, i.e., the right to work in the face of a strike. It is so held by the National Labor Relations Board on the authority of section 8 (b) (1) (A) and section 7, 61 Stat. 136, 140-141, 29 U.S.C. Supp. 158 (b) - (1) (A) and 157. In *In re ILWU, Sunset Line & Twine Co.,* 79 N.L.RB. No. 207, Case No. 20-CB-1 (October 22, 1948) the ILWU was held responsible for intimidating acts, including mass picketing physically obstructing ingress. The ILWU contended that "strikebreakers are guaranteed no rights by the Act [labor management relations act]," but the board disagreed. The ILWU also asserted that these coerced employees were entitled to no protection because the employer precipitated the strike. The board held that unlawful conduct of the employer, if established, would not extinguish the rights of the coerced employees. See also *In re Local 1150, United Electrical, Radio & Machine Workers,* 84 N.L.R.B. No. 110, Case No. 13-CB-5 (June 30, 1949).

Note 90, cited p. 108.

The below analysis of United States Supreme Court cases starts with the *Hague* case which is the foundation of the "good faith rule," as appears from *Douglas* v. *Jeannette.*

Hague v. *CIO,* 307 U.S. 496. Plaintiffs alleged and showed that they sought to hold public meetings and distribute literature in Jersey City, that their activities were peaceful and performed without violence or other unlawful methods, that an ordinance prohibited the holding of meetings without a permit and such permit had been refused and plaintiffs were threatened with arrest if they held such meetings; that under another ordinance prohibiting the distribution of literature plaintiffs and their asso-

ciates, while acting in an orderly and peaceful manner, had been arrested and carried outside the city; and that defendants had adopted a deliberate policy of excluding and removing plaintiffs' agents from Jersey City. An injunction against continuance of defendants' conduct was sought. No pending prosecutions were involved. The decree as modified held the ordinances void and enjoined their enforcement. It moreover prohibited the defendants from removing persons from Jersey City or confining them without lawful arrest and production for judicial hearing.

Beal v. *Missouri-Pacific R.R.,* 312 U.S. 45, 49. Plaintiff sought to enjoin the state officers from prosecuting plaintiff's agents under the Nebraska Full Train Crew Law. No prosecutions were pending; an investigation had been made by the Railway Commission which had referred the facts to the attorney general for determination as to whether a criminal offense had been committed. The attorney general had alleged that if he decided to prosecute at all, he would conduct a single test suit. The lower court proceeded on the theory that the plaintiff's complaint showed compliance with the state law and that a criminal prosecution would be an abuse of power and should be restrained (108 F. 2d 897, 901). The Supreme Court held that whether plaintiff was acting lawfully or unlawfully was for the state courts to decide, and it was in this connection that the court said: "No citizen or member of the community is immune from prosecution, in good faith, for his alleged criminal acts. The imminence of such a prosecution even though alleged to be unauthorized and hence unlawful is not alone ground for relief in equity * * *." (312 U.S. at p. 49.)

Watson v. *Buck,* 313 U.S. 387, is a case holding that actual threats of enforcement and the irreparable injury resulting if those threats are carried out must be shown before restraint of criminal proceedings is justified. No

pending prosecutions were involved. The court quoted verbatim from the *Beal* case in support of the general rule that federal injunctions against state criminal statutes are not to be granted as a matter of course, even if such statutes are unconstitutional.

Douglas v. *Jeannette,* 319 U.S. 141, was a suit to restrain threatened criminal prosecutions. It appears from the opinion of the trial court in 89 F. Supp. 33, where the facts are said to be parallel to those in the companion case of *Reid* v. *Brookville,* 39 F. Supp. 30, that no pending prosecutions were involved. It there is noted (page 32) that injunctions were sought "against threatened future enforcement of the ordinances against Jehovah's Witnesses, but not upon any prior convictions against them." From the opinion of the court of appeals in the Jeannette case (130 F. 2d 652, 655) it appears that this trial court statement had reference to a group of convictions then on appeal. There had been more than fifty-one arrests before this last group, and many convictions.

The trial court issued a decree on the theory of preventing "continuing invasion of property or constitutional rights" (p. 32), i.e., the right of Jehovah's Witnesses to sell religious literature. Holding invalid ordinances which required licenses for such acts the trial court enjoined enforcement of the ordinances against Jehovah's Witnesses "when engaged in the advocacy of their religious views by the sale of books, periodicals and tracts." The court of appeals disagreed on the merits of the ordinance, upholding its constitutionality (130 F. 2d 652). The Supreme Court, while agreeing with the trial court that the ordinance as applied was unconstitutional, it having just so held in *Murdock* v. *Pennsylvania,* 319 U.S. 105, nevertheless held that the bill was without equity. After stating, in the language of the *Beal* case, that "No person is immune from prosecution in good faith for his alleged criminal acts," the court

continued with the explanation that "Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction" (P. 163). The court then held that the declared intention to institute other prosecutions was not sufficient to establish irreparable injury; this in itself in view of the number of arrests which had already been made, the numerous members of the group who were threatened with prosecution, and the already adjudicated unconstitutionality of the licensing requirement, is significant as to what the court meant by good faith. But the court at the bottom of page 164 specifically shows that it was the situation in the *Hague* case which it had in mind in talking about good faith, the court saying, "the case differs from Hague v. CIO, supra, 501-02, where local officials forcibly broke up meetings of the complainants and in many instances forcibly deported them from the state without trial."

Note 122, cited p. 135.

The grand jury issue was mooted in No. 12300. First, as to the 1947 Maui County Grand Jury, its term expired on January 12, 1948 (see sections 9638 and 9802, Revised Laws of Hawaii 1945, appendix VII). Prior thereto, it took no action, because the temporary restraining orders of December 1 and December 10, 1947, prevented the presentation of evidence to it. Hence, the court could not have given plaintiffs any effectual relief so far as the 1947 grand jury is concerned. Second, as to the 1948 Maui County Grand Jury, plaintiffs did not raise an issue concerning its composition (although if the plaintiffs were right in their contention in No. 12301 that they could initiate a grand jury challenge in the federal court,

they could have done the same thing in No. 12300 as to the 1948 grand jury by a supplemental pleading under Rule 15 (d) of the Federal Rules of Civil Procedure). Since such grand jury was not in issue, the court could not have granted the plaintiffs any relief so far as the 1948 grand jury is concerned. Hence, in No. 12300 the grand jury issue was mooted. *Mills* v. *Green,* 159 U.S. 651; *Jones* v. *Montague,* 194 U.S. 147, 151, 152; *Richardson* v. *McChesney,* 218 U.S. 487, 492; *Otis* v. *International Mercantile Marine Co.,* 95 F. 2d 539, 541 (C.A. 9th).

APPENDIX II.

THE UNLAWFUL ASSEMBLY AND RIOT ACT

as it read at the time of the cases below.

(From the Revised Laws of Hawaii 1945)

Chapter 277. Riots and Unlawful Assemblies.

Sec. 11570. Unlawful assembly defined. Where three or more persons are, of their own authority, assembled together with disturbance, tumult and violence, and striking terror or tending to strike terror into others, such meeting is an unlawful assembly within the meaning of the provisions of this chapter.

Sec. 11571. Riot defined. A riot is where three or more being in unlawful assembly join in doing or actually beginning to do an act, with tumult and violence, and striking terror, or tending to strike terror into others.

Sec. 11572. Menacing demonstrations. Menacing language, or gestures, or show of weapons or other signs or demonstrations tending to excite terror in others, are sufficient violence to characterize an unlawful assembly or riot.

Sec. 11573. Concurrence in intent. Concurrence in an intent of tumult and violence, and in any violent tumultuous act, tending to strike terror into others, is a sufficient joining in intent to constitute a riot, though the parties concerned did not previously concur in intending the act. For example, where persons present at a public performance concur in the intent to disturb the same by tumult and violence, tending to strike terror; or concur in one or more acts of tumult or violence tending to strike terror, done by any of the assembly.

Sec. 11574. Tumult and violence though assembled lawfully. It is not requisite in order to constitute an unlawful assembly or riot, that persons should have come together with a common or unlawful intent, or in any unlawful manner; or that the object of the meeting, or the act done or intended, should of itself be unlawful. The tumult and violence tending to excite terror, characterize the offense, though the persons may have assembled in a lawful manner, and though the object of the meeting, if legally pursued, or the act done or intended, if performed in a proper manner, would be lawful.

Sec. 11575. Promoting or aiding. Persons present at a riot or unlawful assembly, and promoting the same, or aiding, abetting, encouraging or countenancing the parties concerned therein by words, signs, acts or otherwise, are themselves parties thereto and principles therein.

Sec. 11576. Remaining after order to disperse. In case of an unlawful assembly being by proclamation or otherwise ordered to disperse by any one having legal authority to disperse the same, any one voluntarily remaining in the assembly after notice of the order, except for keeping the peace, is thereby a party concerned in the unlawful assembly.

Sec. 11577. Notice of order presumed. Every person present in an unlawful assembly is presumed to have notice of an order given by lawful authority in lawful manner for the same to disperse.

Sec. 11578. Penalty where object is injury of house, etc. Whoever is guilty of a riot or unlawful assembly, having for its object the destruction or injury of any house, building, bridge, wharf, or other erection or structure; or the destruction or injury of any ship or vessel, or the furniture, apparel or cargo thereof, shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding five hundred dollars; and shall also be answerable to any person injured to the full amount of his damage.

Sec. 11579. Penalty where persons are endangered. Whoever is guilty of being a party concerned in a riot or unlawful assembly endangering the life, limb, health or liberty of any person, or in any other riot or unlawful assembly, not of the description designated in section 11578, shall be punished by a fine not exceeding one thousand dollars or by imprisonment at hard labor for not more than twenty years.

Sec. 11580. Riot, unlawful assembly. If upon the trial of any person for being concerned in a riot or unlawful assembly as described in section 11579, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any offense mentioned in section 11578, then the jury may return as their verdict that he is not guilty of the offense charged, but is guilty of such offense, and he may be punished accordingly.

DISPERSION OF UNLAWFUL ASSEMBLIES.

Sec. 11581. By officers. In case of any riot or unlawful assembly in any town, village or district, it shall be the duty of every district magistrate there resident, and also

of the high sheriff, sheriff, and his deputies, and of the chief of police for the town, village or district to go among the persons so assembled, or as near to them as may be with safety, and in the name of the Territory to command all the persons so assembled immediately and peaceably to disperse; and if the persons shall not thereupon so disperse, it shall be the duty of each of the officers to command the assistance of all persons present, in seizing, arresting and securing in custody the persons so unlawfully assembled, so that they may be proceeded with for their offense according to law.

Sec. 11582. Posse comitatus. If any persons riotously or unlawfully assembled, who have been commanded to disperse by the high sheriff, sheriff, deputy sheriff, chief of police, or district magistrate, shall refuse or neglect to disperse without unnecessary delay, any two of the officers may require the aid of a sufficient number of persons in arms, or otherwise, as may be necessary, and shall proceed in such manner as in their judgment shall be expedient forthwith to disperse and suppress the unlawful, riotous, or tumultuous assembly, and seize and secure the persons composing the same, so that they may be proceeded with according to law.

Sec. 11583. Orders to. Whenever an armed force shall be called out for the purpose of suppressing any tumult or riot or unlawful assembly, or to disperse any body of riotous men, the armed force shall obey such orders for suppressing the riot or tumult or for dispersing and arresting the persons who are committing any of the said offenses, as they may receive from the high sheriff, sheriff, or chief of police, and also such further orders as they may receive after they shall arrive at the place of the unlawful, riotous or tumultuous assembly, as may be given by any two of the magistrates or officers mentioned in the preceding section.

Sec. 11584. Persons killed or wounded. If by reason of the efforts made by any two or more such magistrates or officers, or by their direction, to disperse the unlawful, riotous or tumultuous assembly, or to seize and secure the persons composing the same, who have refused to disperse, any such person or any other person then present, as spectators or otherwise, shall be killed or wounded, the magistrates and officers and all persons acting by their order or under their direction shall be held guiltless and justified by law, and if any of the magistrates or officers, or any person acting under their authority or by their direction shall be killed or wounded, all the persons so at the time unlawfully, riotously or tumultuously assembled, and all other persons who, when commanded or required, shall have refused to aid and assist the magistrates or officers, shall be held answerable therefor.

APPENDIX III.

ACT 62 OF THE SESSION LAWS OF HAWAII 1949

AN ACT

RELATING TO RIOTS AND THE DISPERSION OF PERSONS PRESENT THEREAT, DEFINING OFFENSES IN CONNECTION THEREWITH AND PRESCRIBING PUNISHMENT THEREFOR, AMENDING CERTAIN SECTIONS OF CHAPTER 277 OF THE REVISED LAWS OF HAWAII 1945, REPEALING OTHER SECTIONS OF SAID CHAPTER, AND DEFINING THE APPLICATION OF RELATED STATUTES AND RULES OF LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. Section 11571 of Chapter 277 of the Revised Laws of Hawaii 1945 is hereby amended to read as follows:

"*Sec. 11571. Riot defined.* Any use of force or violence, disturbing the public peace, or any threat or attempt to use such force or violence, if accompanied by immediate power of execution, by six or more persons acting together, and without authority or justification by law, is a riot."

SECTION 2. Section 11579 of Chapter 277 of the Revised Laws of Hawaii 1945 is hereby amended to read as follows:

"*Sec. 11579. Penalty for riot.* Every person who participates in any riot is guilty of a felony and shall be punished by fine not exceeding one thousand dollars or by imprisonment at hard labor for not more than two years, or both such fine and imprisonment."

SECTION 3, Section 11581 of Chapter 277 of the Revised Laws of Hawaii 1945 is hereby amended to read as follows:

"*Sec. 11581. Remaining present at place of riot after order to disperse.* If a magistrate, police officer, or other peace officer, during or following the commission of a riot in which force or violence has been used disturbing the public peace, shall order the persons present at the place of such riot to disperse, any person thereafter remaining present at the place of such riot is guilty of a misdemeanor, unless (1) he so remains because of ignorance of such order; or (2) as a magistrate, police officer, or other peace officer, or at the request or command of a magistrate, police officer, or other peace officer, he is endeavoring to effect or assisting in the dispersion so ordered, or the protection of persons or property, or the arrest of offenders. The duties and functions of magistrates, police officers, and other peace officers, provided for by this section, are in addition to those provided for by any other law relating to the preservation of the public peace or the prevention or suppression of acts affecting the public peace.

"Whoever is guilty of a misdemeanor under this section shall be punished by a fine not exceeding five hundred dollars or by imprisonment for not more than one year, or both such fine and imprisonment."

SECTION 4. Sections 11570, 11572 to 11579, inclusive, 11580, 11582, 11583, and 11584 of Chapter 277 of the Revised Laws of Hawaii 1945 are hereby repealed; provided, that the repeal of said sections shall not be construed (1) as relieving or depriving any magistrate, peace officer, or other person of any power, duty, function, immunity, or defense of justification which, pursuant to any other statute or rule of law, pertains to him, or would pertain to him had such repealed sections never been enacted, or (2) as in derogation of the application to the subject matter of Chapter 277 of the Revised Laws of Hawaii 1945, as amended by this Act, of any other statute or rule of law applicable thereto, or which would be applicable thereto had such repealed sections never been enacted; and provided further, that all such statutes and rules of law relating to the powers, duties, functions, immunities, and defenses of justification of magistrates, peace officers, and other persons, or in anyway relating to the subject matter of Chapter 277 of the Revised Laws of Hawaii 1945, as amended by this Act, shall apply to the same extent and in the same manner as if such repealed sections had never been enacted.

SECTION 5. Chapter 277 of the Revised Laws of Hawaii 1945 is hereby further amended by amending the chapter heading to read "Riots and the Dispersion Thereof," and by deleting the subtopic heading which precedes Section 11581.

SECTION 6. This Act shall take effect on its approval; provided, that this Act shall not affect the liability of any person to prosecution and punishment for the offense of

riot committed prior to said effective date and all such offenses may be prosecuted and punished the same as if this Act had not been enacted; provided further, that in no event shall the punishment for any such offense exceed the punishment provided for the offense of riot by Section 11579 of the Revised Laws of Hawaii 1945, as amended by this Act.

SECTION 7. If any section, sentence, clause or phrase of this Act, or its application to any person or circumstances, is for any reason held to be unconstitutional or invalid, the remaining portions of this Act, or the application of this Act to other persons or circumstances, shall not be affected. The Legislature hereby declares that it would have passed this Act and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional or invalid.

Approved this 21st day of April, A.D. 1949.

INGRAM M. STAINBACK,
Governor of the Territory of Hawaii.

APPENDIX IV.

THE CONSPIRACY STATUTE

as it read at the time of the cases below.

(From the Revised Laws of Hawaii 1945)

CHAPTER 243. CONSPIRACY.

Sec. 11120. Defined; examples. A conspiracy is a malicious or fraudulent combination or mutual undertaking or concerting together of two or more, to commit any offense or instigate any one thereto, or charge any one therewith; or to do what plainly and directly tends to excite or occa-

sion offense, or what is obviously and directly wrongfully injurious to another:

For instance—A confederacy to commit murder, robbery, theft, burglary or any other offense prohibited by law; to prevent, obstruct, defeat or pervert the course of justice, by suborning a witness, tampering with jurors, or the like offenses; to groundlessly accuse any one of, and cause him to be prosecuted for, an offense; to charge any one with an offense, with the intent and for the purpose of extorting money from him; to falsely charge one with being the father of an illegitimate child; to cheat another by means of false tokens and pretenses; to manufacture a spurious article for the purpose of defrauding whomsoever the same can be sold to; to destroy a will and thereby prejudice the devisees; to prevent another, by indirect and sinister means, from exercising his trade, and to impoverish him; to establish, manage or conduct a trust or monopoly in the purchase or sale of any commodity.

Sec. 11121. Joining in after formation. Any person knowingly acceding to and joining in a conspiracy after the same is formed, is a party thereto, no less than the one who originally takes part in forming the same.

Sec. 11122. Act in pursuance of, unnecessary. It is not requisite that the act agreed upon should be done or attempted in pursuance of the conspiracy; the conspiracy itself constitutes the offense.

Sec. 11123. Act of any is that of all. The act of each party to a conspiracy, in pursuance thereof, is the act of all.

Sec. 11124. Husband and wife. Husband and wife cannot by themselves without others, be guilty of a conspiracy, and the acts or confessions of either are not evidence against the other in a prosecution for conspiracy.

PROCEDURE.

Sec. 11125. Trial joint or several. Conspirators may be tried jointly or severally. But to prevent oppression by joining parties, and thus depriving some of the testimony of others, it is provided that in the trial of any one for a conspiracy, another, charged as a co-conspirator, may be a witness, and in such case the two may be seperately tried, though joined in the indictment.

Sec. 11126. Conspiracy and offense both not punishable. Where one is convicted of any offense, he is not liable thereafter to be tried for or convicted of a conspiracy to commit the same; and if a conspiracy to commit an offense and the commission of the same be charged in the same indictment, the defendant is liable to be sentenced for one only.

Sec. 11127. Trivial offense. On a prosecution for conspiracy, if the jury find, or the magistrate having jurisdiction of the fact consider, the offense to be trivial, the defendants shall be discharged, with or without costs, in the discretion of the court.

DEGREES, PENALTIES.

Sec. 11128. First degree. Conspiracy to commit, or to instigate to the commission of a felony; or to charge any one with felony; or to prevent, obstruct, defeat, or pervert the course of justice; or to forge or counterfeit or cheat to an amount exceeding one hundred dollars, is in the first degree, and shall be punished by imprisonment at hard labor not more than ten years, or by fine not exceeding ten thousand dollars.

Sec. 11129. Second degree. A conspiracy to establish, create, manage or conduct a trust or monopoly in the purchase or sale of any commodity is in the second degree, and

shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding one thousand dollars.

Sec. 11130. Third degree. Conspiracy not appearing to be in the first or second degree, is in the third degree, and shall be punished by imprisonment of not exceeding one year and by fine not exceeding four hundred dollars.

APPENDIX V.

ACT 10 OF THE SPECIAL SESSION LAWS OF HAWAII 1949

AN ACT

RELATING TO CONSPIRACY, AMENDING SECTIONS 11120, 11128 AND 11129 OF THE REVISED LAWS OF HAWAII 1945, REPEALING SECTIONS 11127 AND 11130 THEREOF, AND ENACTING A NEW SECTION OF THE REVISED LAWS OF HAWAII 1945 TO BE NUMBERED 11127.01.

BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF HAWAII:

SECTION 1. Section 11120 of the Revised Laws of Hawaii 1945 is hereby amended to read as follows:

"*Sec. 11120. Conspiracy defined.* If two or more persons conspire:

1. To commit any offense, or
2. To instigate or incite another or others to commit any offense, or
3. To bring or maintain any suit or proceeding knowing the same to be groundless, or
4. To cause another or others to be arrested, charged or indicted for any offense, knowing them to be innocent thereof,

each shall be guilty of conspiracy."

SECTION 2. There is hereby added to chapter 243 of the Revised Laws of Hawaii 1945 a new section 11127.01 to read as follows:

"*Sec. 11127.01. Witnesses' privileges.* No person shall be excused from attending and testifying, or producing any books, papers or other documents, in any proceeding involving a conspiracy before any grand jury, district court or magistrate, or circuit court or judge, upon the ground that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime, or to subject him to a penalty or forfeiture; but no individual shall be prosecuted, or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that any individual so testifying shall not be exempt from prosecution and punishment for perjury in so testifying."

SECTION 3. Section 11128 of the Revised Laws of Hawaii 1945 is hereby amended to read as follows:

"*Sec. 11128. First degree.* Conspiracy to commit a felony, or to instigate or incite another or others to commit a felony, or to cause another or others to be arrested, charged, or indicted for a felony, knowing them to be innocent thereof, is conspiracy in the first degree, and shall be punished by imprisonment at hard labor for not more than ten years, or by a fine not exceeding ten thousand dollars, or by both such fine and imprisonment; provided, that the punishment for any conspiracy to commit a felony, or to instigate or incite another or others to commit a felony, shall not exceed the punishment that could be given for commission of the felony involved in the conspiracy."

SECTION 4. Section 11129 of the Revised Laws of Hawaii 1945 is hereby amended to read as follows:

"*Sec. 11129. Second degree.* Conspiracy not included in section 11128 is conspiracy in the second degree, and shall be punished by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both such fine and imprisonment; provided, that the punishment for any conspiracy to commit a misdemeanor, or to instigate or incite another or others to commit a misdemeanor, shall not exceed the punishment that could be given for commission of the misdemeanor involved in the conspiracy."

SECTION 5. Sections 11127 and 11130 of the Revised Laws of Hawaii 1945 are hereby repealed.

SECTION 6. If any section, sentence, clause or phrase of this Act, or its application to any person or circumstances, is for any reason held to be unconstitutional or invalid, the remaining portions of this Act, or the application of this Act to other persons or circumstances, shall not be affected. The legislature hereby declares that it would have passed this Act and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION 7. This Act shall take effect upon its approval; provided, that this Act shall not affect the liability of any person to prosecution and punishment for the offense of conspiracy committed prior to said effective date and all such offenses may be prosecuted and punished the same as if this Act had not been enacted.

APPROVED this 29th day of August, A.D. 1949.

INGRAM M. STAINBACK,
Governor of the Territory of Hawaii.

APPENDIX VI.

STATUTES OF THE STATES WITHIN THE NINTH JUDICIAL CIRCUIT DEFINING THE OFFENSES OF UNLAWFUL ASSEMBLY, ROUT AND RIOT, OR PROVIDING FOR SUPPRESSION OF RIOTS.

ARIZONA

(From Arizona Code Annotated 1939)

Sec. 43-1303. Riot defined—Penalty.—Any use of force or violence disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two [2] or more persons acting together, and without authority of law, is a riot. Every person who participates in any riot is guilty of a felony, and punishable by imprisonment in the state prison not exceeding two [2] years, or by fine not exceeding two thousand dollars [$2,000], or both.

Sec. 43-1304. Rout and unlawful assembly defined—Penalty.—Whenever two [2] or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout. Whenever two [2] or more persons assembled together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, tumultuous manner, such assembly is an unlawful assembly. Every person who participates in any rout or unlawful assembly, and every person remaining present at the place of any riot, rout or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Sec. 43-1305. Failure of officer to suppress.—Any magistrate or officer, having notice of an unlawful or riotous assembly, who neglects to proceed to the place of assembly,

or as near thereto as he can with safety, and to exercise the authority with which he is vested for suppressing the same and arresting the offenders, is guilty of a misdemeanor.

* * * *[1]

Sec. 43-110. Punishment when not prescribed.—Except when a different punishment is prescribed by this Code, every offense declared to be a felony is punishable by imprisonment in the state prison not exceeding five [5] years, and every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six [6] months, or by a fine not exceeding three hundred dollars [$300], or by both. When an act or omission is declared by a statute to be a public offense, and no penalty for the offense is prescribed in any statute, the act or omission is punishable as a misdemeanor.

* * * *

Sec. 45-109. Officers to disperse unlawful assemblies.—Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and the constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the state, immediately to disperse. If the people assembled do not immediately disperse, the magistrate and officers shall arrest them, and for that purpose may command the aid of all persons present or within the county.

CALIFORNIA

(From Deering's Penal Code of California 1949)

Sec. 404. "Riot" defined. Any use of force or violence, disturbing the public peace, or any threat to use such force

[1] Indicates that what follows is in a different chapter, article, or part.

or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

Sec. 405. Riot, punishment of. Every person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by fine not exceeding two thousand dollars, or both.

Sec. 406. "Rout" defined. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

Sec. 407. "Unlawful assembly" defined. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

Sec. 408. Punishment of rout and unlawful assembly. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Sec. 409. Remaining present at place of riot, etc., after warning to disperse. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Sec. 410. Magistrates [or officers] neglecting or refusing to disperse rioters. If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

* * * *

Sec. 726. Magistrates and officers to command [unlawful assembly or] rioters to disperse. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse.

Sec. 727. To arrest rioters if they do not disperse: Aid of citizens. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

* * * *

Sec. 19. [*Punishment for misdemeanor.*] Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars, or by both.

IDAHO

(From Idaho Code Annotated 1932)

Sec. 17-3001. Riot defined.—Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

Sec. 17-3002. Punishment for riot.—Every person who participates in any riot is guilty of a misdemeanor.

Sec. 17-3003. Rout defined.—Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

Sec. 17-3004. Unlawful assembly defined.—Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous or tumultuous manner, such assembly is an unlawful assembly.

Sec. 17-3005. Punishment for rout and unlawful assembly.—Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Sec. 17-3006. Persons present at riots and routs.—Every person remaining present at the place of any riot, rout or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Sec. 17-3007. Officers neglecting to suppress riots.—If a magistrate or officer, having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

* * * *

Sec. 19-224. Commanding rioters to disperse.—Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them in the name of the people of the state immediately to disperse.

Sec. 19-225. Arrest of rioters.—If the persons assembled do not immediately disperse, such magistrates and officers

must arrest them, and to that end may command the aid of all persons present or within the county.

* * * *

Sec. 17-113. Punishment for misdemeanor.—Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor, is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding $300, or by both.

MONTANA

(From Revised Codes of Montana 1935 Annotated)

Sec. 11285. Riot defined. Any use of force or violence, disturbing the public peace, or any threats to use force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot.

Sec. 11286. Riot, punishment of. Any person who participates in any riot is punishable by imprisonment in the county jail not exceeding two years, or by a fine not exceeding two thousand dollars, or both.

Sec. 11287. Rout defined. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout.

Sec. 11288. Unlawful assembly defined. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or to do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly.

Sec. 11289. Punishment of rout and unlawful assembly. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor.

Sec. 11290. Remaining present at place of riot, etc., after warning to disperse. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Sec. 11291. Magistrate neglecting or refusing to disperse rioters. If a magistrate having notice of an unlawful or riotous assembly, mentioned in this chapter, neglects to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is vested for suppressing the same and arresting the offenders, he is guilty of a misdemeanor.

* * * *

Sec. 11658. Magistrates and officers to command rioters to disperse. Where any number of persons, whether armed or not, are unlawfully or riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the justices of the peace and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them in the name of the state immediately to disperse.

Sec. 11659. To arrest rioters if they do not disperse. If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

* * * *

Sec. 10725. Punishment of misdemeanor, when not otherwise prescribed. Except in cases where a different punishment is prescribed by this code, every offense declared to be a misdemeanor is punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding five hundred dollars, or both.

(From Nevada Compiled Laws 1929)

Sec. 10278. Unlawful Assemblage. §330. If two or more persons shall assemble together to do an unlawful act, and separate without doing or advancing towards it, such persons shall be deemed guilty of an unlawful assembly, and, upon conviction thereof, shall be severally fined in a sum not exceeding two hundred dollars, or imprisoned in the county jail not exceeding three months.

Sec. 10279. Rout and Riot. §331. If two or more persons shall meet to do an unlawful act, upon a common cause or quarrel, and make advances toward it, they shall be deemed guilty of a rout, and, on conviction, shall be severally fined in a sum not exceeding five hundred dollars, or imprisonment in the county jail not more than six months; and if two or more persons shall actually do an unlawful act of violence, either with or without a common cause of quarrel or even do a lawful act, in a violent, tumultuous, and illegal manner they shall be deemed guilty of a riot, and, upon conviction thereof, shall be fined in any sum not exceeding five hundred dollars each or by imprisonment in the county jail for any term of time not exceeding six months, or by both such fine and imprisonment.

* * * *

Sec. 4836. Riotous Assemblage.—Command to Disperse. §87. When six or more persons, whether armed or not, shall be unlawfully or riotously assembled in any city or town, the sheriff of the county and his deputies, the mayor and aldermen of the city, or the constable of the town, and the justices of the peace, shall go among the persons so assembled, or as near as possible, and shall command them, in the name of the people of the United States and the State of Nevada, immediately to disperse.

Sec. 4837. [*Same.*]—*Arrest.—Power of County.* §88. If the persons assembled do not immediately disperse, the magistrates and officers shall arrest them, that they may be punished according to law, and for that purpose may command the aid of all persons present or within the county.

Sec. 4838. Refusing to Use Authority to Suppress Riot.—Penalty. §90. If a magistrate or officer, having notice of an unlawful or riotous assembly, as provided in section 87, neglect or refuse to proceed to the place of assembly, or as near thereto as he can with safety, and to exercise the authority with which he is invested for suppressing the same and arresting the offenders, he shall be deemed guilty of a misdemeanor, and shall be punished accordingly.

OREGON

(From Oregon Compiled Laws Annotated)

Sec. 23-801. Riot and unlawful assembly. Any use of force or violence, or any threat to use force or violence, if accompanied by immediate power of execution, by three or more persons acting together, and without authority of law, is riot. Whenever three or more persons assemble with intent, or with means and preparation to do an unlawful act, which would be riot if actually committed, but do not act towards the commission thereof, or whenever such persons assemble without authority of law, and in such manner as is adapted to disturb the public peace or excite public alarm, or disguised in a manner adapted to prevent them from being identified, such assembly is an unlawful assembly.

Sec. 23-802. Punishment for participating in riot. If any person shall be guilty of participating in any riot, such person, upon conviction thereof, shall be punished as follows:

(1) If any felony or misdemeanor was committed in the course of such riot, such person shall be punished in the same manner as a principal in such crime;

(2) If such person carried, at the time of such riot, any species of dangerous weapon, or was disguised, or encouraged or solicited other persons who participated in the riots to acts of force or violence, such person shall be punished by imprisonment in the penitentiary not less than three nor more than fifteen years;

(3) In all other cases, such person shall be punished by imprisonment in the county jail not less than three months nor more than one year, or by fine not less than $50 nor more than $500.

Sec. 23-806. Dispersal of unlawful or riotous assemblages: Duties of officers: Arrest and punishment of rioters: Commanding aid: Liability for refusal to aid or neglect to exercise authority. When any persons to the number of three or more, whether armed or not, are unlawfully or riotously assembled in any county, city, town or village, the sheriff of the county and his deputies, the mayor of the city, town or village, or chief executive officer or officers thereof, and the justice of the peace of the county for the precinct where the assemblage takes place, or such of them as can forthwith be collected, must go among the persons assembled, or as near to them as they can with safety, and command them in the name of the state of Oregon to disperse. If, so commanded, they do not immediately disperse, the said officer must arrest them or cause them to be arrested, and they may be punished according to law, and for that purpose the arresting officer or officers may command the aid of persons present or within the county, except members of the national guard. If any person so commanded to give such aid shall fail, neglect or refuse to so do, he is deemed one of the rioters, and may be treated and punished accordingly. If any such

officer, having notice of such unlawful or riotous assemblage, shall neglect to exercise the authority with which he is invested, as prescribed in this section, he is guilty of a misdemeanor.

WASHINGTON

(From Pierce Code 1939)

Sec. 9078. Riot Defined. §296. Whenever three or more persons, having assembled for any purpose, shall disturb the public peace by using force or violence to any other person, or to property, or shall threaten or attempt to commit such disturbance, or to do any unlawful act by the use of force or violence, accompanied with the power or immediate execution of such threat or attempt, they shall be guilty of a riot.

Sec. 9079. Penalty. §297. Every person who shall be guilty of riot or of participating therein, by being present at, or by instigation, permitting or aiding the same, shall be punished as follows:

1. If the purpose of the assembly or the acts done therein, or intended by the persons engaged, shall be to resist the enforcement of a statute of this state or of the United States, or to obstruct any public officer of this state or the United States in serving or executing any process or other mandate of a court, or in the performance of any other duty, or if at the time of the riot the offender shall carry a firearm or any other dangerous weapon, or shall be disguised, by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars.

2. If the offender shall direct, advise, encourage or solicit other persons present or participating in a riot or assembly to acts of force or violence, by imprisonment in the state

penitentiary for not more than two years, or by a fine of not more than one thousand dollars.

3. In every other case, by imprisonment in the county jail for not more than one year, or by a fine of not more than one thousand dollars.

Sec. 9080. Unlawful Assembly. §298. Whenever three or more persons shall assemble with intent—

1. To commit any unlawful act by force; or

2. To carry out any purpose in such manner as to disturb the public peace; or

3. Being assembled, shall attempt or threaten any act tending toward a breach of the peace, or an injury to persons or property, or any unlawful act—such an assembly is unlawful, and every person participating therein by his presence, aid or instigation, shall be guilty of a gross misdemeanor.

Sec. 9081. Remaining After Warning. §299. Every person who shall remain present at the place of an unlawful meeting after having been warned to disperse by a magistrate or public officer, unless as a public officer or at the request of such officer he is assisting in dispersing the same, or in protecting persons or property or in arresting offenders, shall be guilty of a misdemeanor.

Sec. 9082. Destruction of Property. §300. Whenever any of the persons so unlawfully assembled shall pull down or destroy any dwelling house or other building, or any shop, steamboat or vessel, he shall be punished by imprisonment in the state penitentiary for not more than five years, or by a fine of not more than one thousand dollars.

Sec. 9083. Disguised and Masked Persons. §301. Any assemblage of three or more persons, disguised by having their faces painted, discolored, colored or concealed shall be unlawful; and every person so disguised present thereat,

shall be guilty of a gross misdemeanor; but nothing herein shall be construed as prohibiting any peaceful assemblage for a masquerade or fancy dress ball or entertainment.

* * * *

Sec. 1799. Duties as Peace Officer — Posse Comitatus. #2769-4. It shall be the duty of sheriffs and of their deputies to keep and preserve the peace in their respective counties, and to quiet and suppress all affrays, riots, unlawful assemblies and insurrection, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary.

* * * *

Sec. 8688. Felonies and Misdemeanors Defined. §1. A crime is an act or omission forbidden by law and punishable upon conviction by death, imprisonment, fine or other penal discipline. Every crime which may be punished by death or by imprisonment in the state penitentiary is a felony. Every crime punishable by a fine of not more than two hundred and fifty dollars, or by imprisonment in a county jail for not more than ninety days, is a misdemeanor. Every other crime is a gross misdemeanor.

APPENDIX VII.

LAWS RELATING TO GRAND JURIES IN THE TERRITORY OF HAWAII.

Hawaiian Organic Act

Sec. 83. Laws continued in force. That the laws of Hawaii relative to the judicial department, including civil and criminal procedure, except as amended by this Act, are continued in force, subject to modification by Congress, or the legislature. The provisions of said laws or any laws of the Republic of Hawaii which require juries to be composed

of aliens or foreigners only, or to be constituted by impaneling natives of Hawaii only, in civil and criminal cases specified in said laws, are repealed, and all juries shall hereafter be constituted without reference to the race or place of nativity of the jurors; but no person who is not a male citizen of the United States and twenty-one years of age and who cannot understandingly speak, read, and write the English language shall be a qualified juror or grand juror in the Territory of Hawaii. No person shall be convicted in any criminal case except by unanimous verdict of the jury. No plaintiff or defendant in any suit or proceeding in a court of the Territory of Hawaii shall be entitled to a trial by a jury impaneled exclusively from persons of any race. Until otherwise provided by the legislature of the Territory, grand juries may be drawn in the manner provided by the Hawaiian statutes for drawing petty juries, and shall sit at such times as the circuit judges of the respective circuits shall direct; the number of grand jurors in each circuit shall be not less than thirteen, and the method of the presentation of cases to said grand jurors shall be prescribed by the supreme court of the Territory of Hawaii. The several circuit courts may subpoena witnesses to appear before the grand jury in like manner as they subpoena witnesses to appear before their respective courts. (48 U.S.C.A. 635.)

Revised Laws of Hawaii 1945

(as amended)

Sec. 9603. Superintendence of inferior courts. The supreme court shall have the general superintendence of all courts of inferior jurisdiction, to prevent and correct errors and abuses therein where no other remedy is expressly provided by law. (L. 1892, c. 57, s. 50; R.L. 1925, s. 2222; R.L. 1935, s. 3592.)

Sec. 9616. Rules for business of courts. For the purpose of expediting any business of the courts in the Territory, in any matter which is not otherwise specifically regulated by law or by any of the general rules hereinabove provided for, and for the purpose of facilitating a speedy and proper administration of justice, the supreme court shall have power to prescribe general rules for the conduct of all business of and the practice in any of the courts of the Territory, which rules shall be effective as of the date fixed by the supreme court. (L. 1939, c. 215, s. 3.)

Sec. 9617. Effect of rules. All general rules made under the provisions of this subtitle shall, when promulgated, have the force and effect of law and shall supersede any statute in conflict therewith. (L. 1939, c. 215, s. 4; am. L. 1941, c. 259, s. 1.)

Sec. 9638. Terms; held when. The terms of the circuit courts shall be as follows: In the first circuit, at Honolulu, on the second Monday of January; in the second circuit, at Wailuku, on the second Monday of January; in the third circuit, at Hilo, on the second Wednesday of January; in the fifth circuit, at Lihue, on the second Wednesday of January. (L. 1892, c. 57, s. 31; am. L. 1895, c. 6, s. 1; am. L. 1903, c. 32, s. 8; am. L. 1905, c. 34, s. 1; am. L. 1905, c. 56, s. 1; am. L. 1907, c. 50, s. 1; am. L. 1911, c. 126, s. 1; am. L. 1917, c. 49, s. 1; am. L. 1919, c. 27, s. 1; am. L. 1921, c. 77, s. 1; R.L. 1925, s. 2244; R.L. 1935, s. 3640; am. L. 1943, c. 141, s. 1 (b).)

Sec. 9791. Qualified when. A person is qualified to act as a juror or grand juror:

1. If he is a male citizen of the United States, and of the Territory, of the age of twenty-one years or over; possesses the qualifications for registration as a voter; has resided in the Territory of Hawaii for not less than three years; is a resident of the circuit from which he is selected; and

2. If he is in possession of his natural faculties and not decrepit; and

3. If he is intelligent, and of good character; and

4. If he can understandingly speak, read and write the English language; and

5. If he is selected, summoned, returned and sworn without reference to race, or place of nativity. (L. 1903, c. 38, s. 1; am. L. 1905, c. 74, s. 1; R.L. 1925, s. 2395; am. L. 1932, 1st, c. 18, s. 1; R.L. 1935, s. 3710; R.L. 1945, s. 9791; am. L. 1945, c. 163, s. 2.)

Sec. 9792. Disqualified when. A person is not competent to act as a juror who does not possess the qualifications prescribed by the preceding section, or who has been convicted of any felony or of a misdemeanor involving moral turpitude. (L. 1903, c. 38, s. 2; R.L. 1925, s. 2396; R.L. 1935, s. 3711.)

Sec. 9793. Exempt when. A person is exempt from liability to act as a juror or grand juror if he is:

1. Over sixty years of age;

2. An attorney-at-law;

3. A salaried officer or employee of the United States, Territory or county;

4. A minister of the gospel, or a priest of any denomination, following his profession;

5. A teacher in a university, college, academy, school, or other place or institution of learning;

6. A practicing physician, surgeon or dentist;

7. An officer, keeper or attendant of an alms-house, hospital or asylum;

8. A person employed on board of a vessel navigating the waters of or between the islands of the Territory, or on board of a vessel engaged in the coasting trade, or plying between any port of the United States and a port in a foreign country;

9. A member of the militia when on active service, or an active member of a fire department of any village, town, city or other place in the Territory. (L. 1903, c. 38, s. 3; am. L. 1913, c. 15, s. 1; R.L. 1925, s. 2397; am. L. 1932, 1st, c. 18, s. 2; R.L. 1935, s. 3712.)

Sec. 9794. Excused when. A juror shall not be excused by a court for slight or trivial cause, but only for serious and unusual hardship or inconvenience to his business, or when material injury or destruction of his property, or of property intrusted to him, is threatened, or when his own health, or the sickness or death of a member of his family, requires his absence. (L. 1903, c. 38, s. 4; R.L. 1925, s. 2398; R.L. 1935, s. 3713.)

Sec. 9795. Affidavit of exemption or excuse. If a person exempt from liability to act as a juror, or entitled to be excused therefrom as provided in sections 9793-9794, be summoned as a juror, he may make and transmit his affidavit to the clerk of the court for which he is summoned, stating his office, occupation or employment, and reason for claiming exemption or excuse; and such affidavit shall be delivered by the clerk to the judge of the court when the name of such person is called, and if sufficient in substance, shall be received as an excuse for non-attendance in person. The affidavit shall then be filed by the clerk. (L. 1903, c. 38, s. 5; R.L. 1925, s. 2399; R.L. 1935, s. 3714.)

Sec. 9796. Panel excused when. Any circuit court or judge may, whenever it shall deem proper and necessary so to do, having regard to the length of the term thereof and equitable distribution of the duties of jurors, excuse any panel or number of jurors, after service, and order another panel or additional jurors to be drawn as nearly as may be as in this chapter provided to complete the business of the term. (L. 1903, c. 38, s. 24; am. L. 1913, c. 5, s. 1; R.L. 1925, s. 2400; R.L. 1935, s. 3715.)

Sec. 9799. Commission; qualifications and commissioners. The judge or judges of each circuit court shall, prior to July 1 of each calendar year, appoint for a period of one year from and after July 1, two citizens as jury commissioners, who shall be voters of the circuit and of good reputation for intelligence, morality and integrity. Such commissioners shall not be members of the same political party. The commissioners, together with the judge of each circuit and, in the first circuit the first judge, shall constitute the jury commission for that circuit. In the absence, disqualification or inability of the first judge of the circuit court, the second or third judge, in the order named, may perform his duties. Should a vacancy occur in the office of a jury commissioner at any time, another commissioner shall be similarly appointed to fill the vacancy. Each jury commissioner shall be allowed for such service such compensation as may be determined by the judge or judges to be just and reasonable, not to exceed two hundred fifty dollars in the first circuit and one hundred dollars in other circuits, payable out of circuit court expense funds. (L. 1903, c. 38, s. 6; am. L. 1905, c. 74, s. 2; am. L. 1923, c. 170, pt. of s. 1; R.L. 1925, s. 2401; am. L. 1932, 1st, c. 18, s. 3; am. L. 1933, c. 111, s. 1; R.L. 1935, s. 3718.) [2]

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[2] Amended by Act 75 of the 1949 Regular Session of the Legislature to read as follows:

"SECTION 1. Section 9799 of the Revised Laws of Hawaii 1945 is hereby amended to read as follows:

" 'Sec. 9799. Commission; qualifications and commissioners. The judge or judges of each circuit court shall, prior to July 1 of each calendar year, appoint for a period of one year from and after July 1, three citizens as jury commissioners, who shall be voters of the circuit and of good reputation for intelligence, morality and integrity. One of such citizens so appointed shall be a clerk of the circuit court. Any such jury commissioner may be removed by the appointing power for any reason deemed sufficient by such appointing power. Not more than two commissioners shall be members of the same political party. The three citizens so appointed shall constitute the jury commission for that circuit. Should a

Sec. 9800. Duty to make list, etc. The jury commission of each circuit shall in each year make and file with the clerk of the circuit court at least ten days before the next term of court two certified, separate lists of citizens to serve respectively as grand and trial jurors in the circuit court for the ensuing year. It shall select and list the names of one hundred citizens as trial jurors and fifty citizens as grand jurors, except that in the first circuit six hundred and fifty trial jurors and seventy-five grand jurors and in the third circuit two hundred fifty trial jurors and fifty grand jurors shall be selected and listed. If in any of the circuits the jury commission shall not be able to select the number required by this section for jurors, it shall select the highest number practicable.

All of such selections shall be citizens whom the respective commissions believe, after careful investigation in each case, to be qualified and not exempt under the provisions of this chapter. If practicable, no person shall be selected who has served as a juror or grand juror within one year. All of such selections shall be made without reference to the political affiliations or to the race or place of nativity of citizens, with a view to obtain lists representative of the qualified citizenry of each circuit.

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vacancy occur in the office of a jury commissioner at any time, another commissioner shall be similarly appointed to fill the vacancy. Each jury commissioner, except the clerk of court appointed to the commission, shall be allowed for service on the jury commission such compensation as may be determined by the judge or judges to be just and reasonable, not to exceed two hundred and fifty dollars in the first circuit and one hundred dollars in other circuits, payable out of circuit court expense funds. Any powers granted by this section to the judges of the first circuit may, by order signed by a majority of such judges, be delegated to any one or more of such judges'."

"SECTION 2. This Act shall take effect upon its approval but shall have no effect upon jury lists made prior to such effective date by jury commissioners then duly appointed and qualified."

The judge serving on the jury commission may at any time, for reasons appearing sufficient to him, order the dissolution of any list of grand or trial jurors and the discharge of the persons named thereon, and upon the entry of such order the jury commission shall make and file with the clerk of the circuit court within such time as the judge shall direct another list of grand or trial jurors, which may include any of the persons so discharged, to serve for the remainder of the year. (L. 1903, c. 38, s. 7; am. L. 1905, c. 74, s. 3; am. L. 1923, c. 170, pt. of s. 1; R.L. 1925, s. 2402; am. L. 1932, 1st, c. 18, s. 4; am. L. 1933, c. 111, s. 2; R.L. 1935, s. 3719; am. imp. L. 1943, c. 141; am. L. 1945, c. 149, s. 1.)

(Sec. 9800.01.) Section 1. (Limitation on selection.) No person shall be selected and listed as a grand juror who has been so selected and listed within one year; and no person shall be selected and listed as a trial juror who has been so selected and listed within one year. (L. 1945, c. 163, s. 1.)

Sec. 9801. Commission; power to summon for examination. The commission may in its discretion, by circuit court process issued by the circuit judge member of the commission, summon before it for examination prospective jurors or grand jurors. A person so summoned for examination shall receive mileage as provided in section 9797. (L. 1932, 1st, c. 18, s. 5; R.L. 1935, s. 3720.)

Sec. 9802. Regular jurors, serve one year. The persons whose names are selected, listed and returned, as aforesaid, by the jury commission, as shown by the certificate thereof filed with the clerk of the court, shall be known as "regular jurors" and shall serve one year and until other persons are selected, listed and returned as jurors in manner aforesaid. (L. 1903, c. 38, s. 9; am. L. 1923, c. 170, pt. of s. 1; R.L. 1925, s. 2403; R.L. 1935, s. 3721.)

Sec. 9803. Drawing grand jury; trial jury; except first circuit. The clerk shall file such certified lists at least ten days before the next term of court, write the names contained in such lists on separate pieces of paper of the same size and appearance, fold each piece so as to conceal the names thereon, and deposit the pieces containing the names of persons selected as grand jurors and trial jurors respectively in appropriate boxes to be called the grand jury box and the trial jury box respectively. He shall then in the presence of the judge, after first shaking the grand jury box so as to thoroughly mix the pieces therein contained, draw therefrom by lot the names of not less than thirteen nor more than twenty-three persons to serve as grand jurors, and in the same manner from the trial jury box the names of not less than eighteen nor more than twenty-six persons to serve as trial jurors at the ensuing term; provided, that in the first circuit the first judge may direct that the grand jury be drawn and summoned to appear before any judge designated by him; and provided further that in the first circuit the trial jurors shall be drawn and summoned as prescribed in section 9804 and not as set forth in this section or in section 9807. A certificate containing lists of the names of persons thus drawn as grand and trial jurors respectively, and a true statement of all the essential facts of such drawings, signed by the judge and attested by the clerk, shall then be filed; provided, that no drawing of grand jurors or trial jurors need be made for any term, if in the opinion of the judge, it is unnecessary. Such drawings shall be made in public after at least one week's publication of notice of the time and place of the same, in a newspaper of general circulation, printed and published within the circuit within which the drawings shall take place, if there is such a newspaper printed and published in the circuit, otherwise after one week's posting of such notice in at least three conspicuous places in the circuit. (L. 1903, c. 38, s. 8; am. L. 1905,

c. 74, s. 4; am. L. 1907, c. 80, s. 1; am. L. 1923, c. 170, pt. of s. 1; R.L. 1925, s. 2404; R.L. 1935, s. 3722.)

Sec. 9810. Impaneling. At the opening of any term of the circuit court for which a grand jury has been ordered and summoned, unless otherwise directed by the court or a judge thereof, and as often thereafter as to the court or a judge may seem proper, a grand jury may be impaneled. At the time when the order for the grand jurors is returnable, or as soon thereafter as convenient, the clerk, under the direction of the court, shall call the names of those summoned, and the court may then hear excuses of jurors summoned. (L. 1905, c. 38, s. 15; R.L. 1925, s. 2411; R.L. 1935, s. 3729.)

Sec. 9811. Charging. The grand jury, being impaneled and sworn, shall be charged by the court. In doing so, the court shall give them such information as it may deem proper as to their duties and as to the law pertaining to such cases as may come before them. The court may further charge the jury when the necessity arises. (L. 1903, c. 38, s. 16; R.L. 1925, s. 2412; R.L. 1935, s. 3730.)

Sec. 9812. Challenging. Before the grand jury is sworn, the prosecuting officer, or any person held to answer a charge for a criminal offense may challenge the panel, or an individual juror, for cause to be assigned to the court. All such challengers shall be tried and determined by the court. The clerk shall then enter upon the jury roll the names of jurors present, not excused and sworn to serve upon the panel. (L. 1903, c. 38, s. 17; am. L. 1905, c. 74, s. 8; R.L. 1925, s. 2413; R.L. 1935, s. 3731.)

For Rule 18 of the Rules of the Supreme Court of the Territory of Hawaii, as amended February 14, 1947, and March 27, 1947, see No. 12301, R. R. 73-78.

APPENDIX VIII.

AFFIDAVIT OF RHODA V. LEWIS, ASSISTANT ATTORNEY GENERAL, RE "SUGGESTION FOR INCORPORATION IN THE RECORD ON APPEAL OF CERTAIN MATTERS OF RECORD IN THIS COURT," FILED IN THE UNITED STATES DISTRICT COURT JUNE 23, 1949 (R. 558-564).

TERRITORY OF HAWAII,
CITY AND COUNTY OF HONOLULU } ss.

RHODA V. LEWIS, being first duly sworn on oath deposes and says: That she is the duly appointed, qualified and acting Assistant Attorney General of the Territory of Hawaii and as such is of counsel for the appellants Walter D. Ackerman, Jr., Attorney General of Hawaii, and Jean Lane, Chief of Police of the County of Maui, in Nos. 12300 and 12301 in this Court.

That on June 23, 1949, in the course of preparation of the record in said cases affiant filed in the United States District Court a "Suggestion for Incorporation in the Record on Appeal" of certain matters in said United States District Court, supported by an affidavit and by confirmation by the clerk of said court (R. 558-564). That at that time the Honorable Delbert E. Metzger was in California on a judicial assignment, and that affiant wrote to Judge Metzger on June 24, 1949, enclosing a copy of the material so filed, and indicating that affiant would endeavor to agree with opposing counsel on an appropriate form of order. Counsel having been unable to agree, the matter was discussed by affiant with Judge Metzger following the return of Judge Metzger to the district, and affiant then advised Judge Metzger of her desire to make an appointment with Judge Metzger and opposing counsel, at the earliest opportunity, both counsel being then constantly engaged in the

United States District Court in Civil No. 930. That following the completion of the said hearings in Civil No. 930 affiant applied for an appointment with Judge Metzger which was obtained for October 3, 1949, that on said date affiant consulted with Judge Metzger in the presence of opposing counsel as to the disposition of affiant's Suggestion for Incorporation in the Record on Appeal, and that Judge Metzger declined to consider the matter in the absence of Judge Biggs and Judge Harris.

That subsequently, on October 10, 1949, the court of its own motion filed an order and supplement to the record on appeal (R. 1993-2001).

RHODA V. LEWIS.

Subscribed and sworn to before me
this 27th day of December, 1949.

(Seal) LOUISE N. COCKETT,
Notary Public, First Judicial
Circuit, Territory of Hawaii.

My commission expires January 22, 1953.

[Filed with the Clerk of the United States Court of Appeals for the Ninth Circuit on December 29, 1949.]